[redacted]

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1953

No. 389

FRANK WALTERS AND EDWARD WILLIAMS, JR., APPELLANTS,

vs.

THE CITY OF ST. LOUIS, JOSEPH M. DARST, MAYOR, AND DEL L. BANNISTER, COLLECTOR

APPEAL FROM THE SUPREME COURT OF THE STATE OF MISSOURI

INDEX

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[fol. 1]

IN THE CIRCUIT OF THE CITY OF ST. LOUIS, DIVISION No. 2, STATE OF MISSOURI

FRANK WALTERS AND EDWARD WILLIAMS, JR., Plaintiffs,

vs.

THE CITY OF ST. LOUIS, JOSEPH M. DARST, MAYOR, AND DEL L. BANNISTER, Collector, Defendants

No. 58,430

AMENDED PETITION

Come now the plaintiffs, by leave of court, first had and obtained and herewith file their first amended petition and state:

1. That plaintiff Frank Walters is and at all times herein mentioned has been a resident of the City of St. Louis, Missouri; that plaintiff Edward Williams, Jr., is and at all times herein mentioned has been a resident of St. Louis County, Missouri; that defendant City of St. Louis is and was at all such times a municipal corporation duly organized, existing and functioning as such under the applicable laws of the State of Missouri; that defendant Joseph M. Darst at all such times was and is the duly elected, qualified and acting Mayor of the City of St. Louis, Missouri, and as such is its Chief Executive Officer; and that defendant Del L. Bannister is and was at all such times the duly elected, qualified and acting Collector of the City of St. Louis, Missouri, and was and is in charge of the Collection Division of the Department of Finance of said City of St. Louis, Missouri; and that defendant Shapleigh Hardware Company at all such times was and is a corporation duly organized and existing according to law and having its chief office and place of business in the City of St. Louis, State of Missouri, and within the jurisdiction of this court.

[fol. 2] 2. That they are now and at all times herein mentioned have been employees of defendant Shapleigh Hardware Company and as such are paid wages and compensation from time to time for their services working as such employees, said payments being made to them on a regular

weekly basis, and that said defendant corporation as their employer has withheld and has threatened and intends to withhold one-half of one percent of the wages and compensation to which they were and are presently entitled and will be entitled in the future by reason of the enactment of an alleged ordinance by the Board of Aldermen of the City of St. Louis, Missouri, purporting to charge a tax against the plaintiffs as well as other employees of corporations who are residents of the City of St. Louis, Missouri, known as a so-called "Earnings Tax," as is hereinafter more fully alleged.

3. That a certain Act was passed by the 66th General Assembly of the Missouri Legislature at its regular session duly called and held at the city of Jefferson City, Missouri, known as House Substitute for House Bill No. 50 of said 66th General Assembly now known as (V. A. M. S., Sec. 92.110-92.200), wherein and whereby it was attempted to be provided by said Act of said Legislature that authority would be given to constitutional charter cities having a population of more than 700,000 inhabitants to levy and collect by ordinance for general revenue purposes an earnings tax on the salaries, wages, commissions and other compensation earned by its residents and also on the salaries, wages, commissions and other compensation earned by non-residents of the city for work done or services performed or rendered in the city, also attempting to authorize exemptions and deductions from the gross earnings of employees and attempting to authorize and impose upon employers the duty of collecting and remitting to the city any tax that may be levied upon the earnings of employees pursuant to this act and to prescribe penalties for failure to [fol. 3] perform such duty with an expiration date, which act of said 66th General Assembly of the State of Missouri is hereby incorporated in this petition by this reference as part hereof.

4. That defendant City of St. Louis is a municipal corporation as hereinbefore alleged, is a city within the territorial limits of the State of Missouri, which at the present time and at the time of the enactment of said House Bill No. 50 was and now is a constitutional charter city having a population of more than 700,000 inhabitants.

5. That on or about the 27th day of August, 1952, that

the Board of Aldermen of the City of St. Louis, which is the legislative body or Municipal Assembly thereof, attempted to enact into law a certain ordinance known as Ordinance No. 46222, which is identified as an earnings tax ordinance wherein and whereby said ordinance attempts to levy and impose an earnings tax for general revenue purposes of one-half of one per cent on salaries, wages, commissions and other compensation earned after August 31, 1952, by residents of the City of St. Louis, and on salaries, wages, commissions and other compensation earned after August 31, 1952, by non-residents of said City, for work done or services performed or rendered in said City, and providing for the filing of returns and payment of the tax by individuals, associations, businesses, corporations, fiduciaries, and other entities, and for the furnishing of information by such taxpayers and by employers, and imposing on employers the duty of collecting the tax at the source and prescribing the duties and powers of the Collector, and providing for interest and penalties on delinquencies, and providing that the divulgence of confidential information or the failure, neglect, or refusal to make any return required under said alleged ordinance, or the failure, neglect, or refusal of any employer to withhold or pay over to the City any amount of tax subject to with-[fol. 4] holding under said alleged ordinance, or the refusal to permit authorized examinations by the Collector, or the making knowingly, of an incomplete, false or fraudulent return, or the attempt to do anything whatsoever to avoid the full disclosure of the amount of earnings or profits shall constitute a misdemeanor; and providing generally for the administration and enforcement of said ordinance and the collection of the said tax, and attempts to empower the defendant Collector of the City of St. Louis to promulgate necessary rules and regulations for the administration of the tax, and authorizing every employer collecting and remitting the tax to deduct and retain therefrom three per cent of the total amount withheld by such employer; containing a separability clause and repealing Article XIV of Chapter 23 of the Revised Code of the City of St. Louis, Missouri, 1948, and attempting to contain an emergency clause, a copy of which ordinance is hereto attached as

Exhibit "A" and is hereby incorporated in this petition by this reference as part hereof.

6. That it is claimed by all the defendants herein named that said Ordinance is in full force and effect and will be enforced, and as above alleged defendant Shapleigh Hardware Company, a corporation, as employer of the plaintiffs has collected and has threatened and intends to continue to collect from the plaintiffs as its employees sums of money amounting to one-half of one percent of the wages and compensation earned by them as such employees after August 31, 1952.

7. That defendant Del L. Bannister, as revenue Collector of the City of St. Louis and in charge of its collection of revenue, has threatened to take into his possession as such Collector and from the defendant Shapleigh Hardware Company, a corporation, such funds as may be collected by said defendant corporation from its employees, including these plaintiffs.

[fol. 5] 8. That at all times herein mentioned and more particularly during the session of the 66th General Assembly of the State of Missouri and at the time when said so-called Enabling Act, House Bill No. 50, was passed by the 66th General Assembly of the State of Missouri, it was provided in the Constitution of the State of Missouri, as follows:

"Article III, Section 40:

"The General Assembly shall not pass any local or special law:

"(21) creating offices, prescribing the powers and duties of officers in, or regulating the affairs of counties, cities, townships, election or school districts;"

"(30) Where a general law can be made applicable and whether a general law could have been made applicable is a judicial question to be judicially determined without regard to any legislative assertion on that subject;"

"Article III, Section 42:

"Section 42. No local or special law shall be passed unless a notice, setting forth the intention to apply therefor and the substance of the contemplated law,

shall have been published in the locality where the matter or thing to be affected is situated at least thirty days prior to the introduction of the bill into the General Assembly and in the manner provided by law. Proof of publication shall be filed with the general assembly before the act shall be passed and the notice shall be recited in the act."

"Article X, Section 11 (f):

"Nothing in this Constitution shall prevent the enactment of any general law permitting any county or other political subdivision to levy taxes other than ad valorem taxes for its essential purposes."

[fol. 6] 9. That said Act of the 66th General Assembly of the State of Missouri, hereinabove referred to in paragraph 3 of this petition as House Bill No. 50, violates each and all of the foregoing provisions of the Constitution of Missouri then in full force and effect and binding upon each of the defendants herein, for the reason that said Bill so attempted to be enacted by the General Assembly of the State of Missouri is a special law applying only to the City of St. Louis and is not a general law and does not comply with the foregoing provisions of the Constitution of Missouri with respect to local or special laws; and that said Bill of the 66th General Assembly specifically provides therein that it shall expire at a certain fixed date which is prior to the time of the next decennial census, which next decennial census will not occur until the calendar year 1960.

10. That at all times herein mentioned and more particularly at the time said Board of Aldermen of said City of St. Louis passed said "earnings" tax Ordinance No. 46222, as aforesaid, and said General Assembly passed said House Bill 50, it was provided in the Constitution of the State of Missouri, as follows:

"Article X, Section 3:

"Limitation of taxation to public purposes—uniformity—general laws—time for payment of taxes—valuation:

"Taxes may be levied and collected for public purposes only, and shall be uniform upon the same class

of subjects within the territorial limits of the authority levying the tax. All taxes shall be levied and collected by general laws and shall be payable during the fiscal or calendar year in which the property is assessed. Except as otherwise provided in this constitution, the methods of determining the value of property for taxation shall be fixed by law."

[fol. 7] "Article I, Section 10:

"Due process of law:

"That no person shall be deprived of life, liberty or property without due process of law."

11. That said ordinance hereinabove referred to, and said enabling act, House Bill No. 50, violated each and all of the foregoing provisions of the Constitution of Missouri and the equal protection of the laws requirements of the Fourteenth Amendment of the Constitution of the United States then in full force and effect and binding upon each of the defendants herein for the reason that said ordinance and House Bill No. 50 seek to levy and collect taxes not uniform upon the same class of subjects and not within the territorial limits of said City of St. Louis, and further that said Ordinance and House Bill are arbitrary and discriminatory against wage earners as a class and particularly these plaintiffs.

12. That the Constitution of the State of Missouri in full force and effect and binding on all of the defendants at all times mentioned herein provided as follows in Article III, Section 22:

"Article III, Section 22. Every bill shall be referred to a Committee of the House in which it is pending. After it has been referred to a committee, one-third of the elected members of the respective Houses shall have power to relieve a committee of further consideration of a bill and place it on the calendar for consideration. Each committee shall keep such record of its proceedings as is required by rule of the respective Houses and this record and the recorded vote of the members of the committee shall be filed with all reports on bills."

13. That plaintiffs are informed and believe and therefore allege the fact to be that at the time said Bill was [fol. 8] pending before the 66th General Assembly of the State of Missouri that the appropriate committee of the House of Representatives, constituting one of the Houses of said General Assembly, caused a record of its proceedings to be kept as required by said Constitutional provision above referred to, and filed the recorded vote of the members of such House committee with such bill; but that in the Senate of the State of Missouri, being also a House of the 66th General Assembly and without whose valid action no bill may properly become a law, the appropriate committee to which said bill was referred failed to keep a record of its proceedings in regard to said Bill so pending before the Senate as a House of the said 66th General Assembly and failed to file with its report the recorded vote of the members of such Senate committee, all of which more fully appears by the report attached to the original and official Bill, namely, said House Bill No. 50, as passed by said General Assembly as the same was and should now be filed in the office of the Secretary of State of the State of Missouri at the seat of government at Jefferson City, Missouri.

14. Plaintiffs furthermore state that under the Charter of the City of St. Louis which was duly adopted by the voters of said City on June 30, 1914, and which has at all times herein mentioned, been in full force and effect and binding upon all of the defendants herein, no provision is made therein for the enactment by the Board of Aldermen, being the municipal assembly, of the City of St. Louis of a tax imposing an earnings tax upon the residents and non-residents of the City of St. Louis and which said denial of authority to the legislative body of the City of St. Louis has recently been determined by a decision of the Supreme Court of the State of Missouri in a suit brought for that purpose by Carter Carburetor Corporation against the City of St. Louis, and plaintiffs are informed and believe and therefore allege the fact to be that the law of the State of [fol. 9] Missouri is applicable to each and all of the defendants herein and binding upon the plaintiffs and their corporate employer as aforesaid so that the City of St. Louis as a municipal corporation is denied the right to levy an earnings tax.

15. That the said act referred to as House Bill No. 50 of the 66th General Assembly of the State of Missouri and said Ordinance are unconstitutional and void and in violation of the terms of the Constitution of the State of Missouri as hereinbefore more specifically alleged, and that the City of St. Louis acting by its Board of Aldermen was wholly without authority to adopt or attempt to adopt said ordinance to impose any such earnings tax upon these plaintiffs, and who are employed by corporations having their offices and businesses in the City of St. Louis, Missouri, as does defendant Shapleigh Hardware Corporation, and that said act of the Legislature and said ordinance and each and both of them are illegal and void for the reasons heretofore assigned and for the further reasons that the enforcement of such ordinance would impose multiple taxation on these plaintiffs and other employees similarly situated; and that said ordinance and said Act, known as House Bill 50, are arbitrary, unreasonable, discriminatory, vague and uncertain, and in violation of said Article I, Section 10, of said Constitution of Missouri and in violation of the due process and equal protection of the laws requirements of the 14th Amendment of the Constitution of the United States.

16. That the defendants, as aforesaid, in their respective capacities as a corporate employer of the plaintiffs and also as officials of the said municipal corporation, and the said municipal corporation through its agents and employees has caused and intends in the future to cause said ordinance to be put into force and effect and has caused said corporate employer, defendant Shapleigh Hardware Company, to retain wages and compensation belonging to the plaintiffs and [fol. 10] intends to cause it to do so in the future and that unless the said Shapleigh Hardware Company and the other defendants herein, including the agents and employees of the City of St. Louis, are restrained and enjoined by order of this court from attempting to carry into effect said ordinance so adopted by said Board of Aldermen, that wages and compensation belonging to the plaintiffs and earned by them in their work and employment with the Shapleigh Hardware Company will continue to be retained not only as to such funds as may have been earned up to the time of the filing of this suit but as the same will be earned in the future; that plaintiffs will be compelled, unless relief herein

is granted, to file a multiplicity of suits as their wages and compensation are retained by their said employer and that penalties will accrue; and that as a result plaintiffs will suffer irreparable injury and damage and that the damage resulting by the attempted enforcement of such illegal ordinance is and will be incapable of ascertainment by the methods and rules cognizable by a court of law and that plaintiffs are without relief in the premises except as prayed for from this court.

17. That they have no adequate remedy at law and unless this court shall issue its declaratory judgment and decree declaring said ordinance so adopted by the Board of Aldermen of the defendant City of St. Louis on or about the 27th day of August, 1952, as illegal and void and unless this court shall issue its injunction, and enjoin and restrain the defendants as prayed that they will be remediless in the premises and therefore they invoke the jurisdiction of and seek the assistance of this court of equity.

Wherefore, the premises considered, plaintiffs pray:

(a) That this court issue its declaratory judgment, adjudging and decreeing that the said ordinance enacted by [fol. 11] the City of St. Louis by its Board of Aldermen on or about the 27th day of August, 1952, assessing an earnings tax against the plaintiffs by the withholding of wages and compensation by plaintiffs' employer as employees of said corporate defendant be declared illegal and void and of no force and effect;

(b) That this court issue its declaratory judgment, adjudging and decreeing that House Bill No. 50 adopted by the 66th General Assembly of the State of Missouri be declared by it to be illegal and void and of no force and effect;

(c) That this court perpetually restrain and enjoin defendants Darst and Bannister in their official capacities and each of them as such, and the City of St. Louis, and its agents and employees, and restrain and enjoin Shapleigh Hardware Company, a corporation, and its agents and employees, from carrying or attempting to carry said Ordinance into effect; and

(d) For all such other and further relief as in the premises may be proper.

[fol. 12] In Circuit Court of the City of St. Louis
Amended Answer to Plaintiffs' First Amended Petition

Come now the defendants City of St. Louis, a municipal corporation, Joseph M. Darst and Del L. Bannister, and for their joint amended answer to plaintiffs' first amended petition herein, state:

1. These defendants admit each and every allegation of paragraphs 1 and 2 in plaintiffs' amended petition contained.

2. These defendants deny that by House Substitute for House Bill No. 50 the General Assembly "attempted" to grant authority to constitutional charter cities having a population of more than 700,000 inhabitants the power to levy and collect, by ordinance for general revenue purposes, an earnings tax, and deny that by said bill the General Assembly "attempted" to authorize exemptions from such tax, and allege that said House Substitute for House Bill No. 50 did grant to constitutional charter cities of over 700,000 inhabitants the right to levy an earnings tax, and did grant to said cities the right to grant certain exemptions therefrom, and did authorize the delegation to employers the duty of collecting and remitting to the City any and all taxes levied upon the earnings of employees.

3. These defendants admit each and every allegation of paragraph 4 in plaintiffs' amended petition contained.

4. In answer to paragraph 5 of plaintiffs' amended petition, these defendants deny that the Board of Aldermen of the defendant City of St. Louis "attempted" to enact Ordinance No. 46222, and allege that said Board of Aldermen did enact said ordinance, and deny that said ordinance is an "alleged" ordinance, and state that said ordinance is [fol. 13] a valid ordinance of said city, and deny that said ordinance "attempts" to empower the defendant Collector of the City of St. Louis to promulgate the necessary rules and regulations for the administration of the tax, and allege that said ordinance does empower the defendant Collector of the City of St. Louis to promulgate the necessary rules and regulations for the administration of said tax.

5. These defendants admit the allegations of paragraphs 6, 7 and 8 of plaintiffs' amended petition.

6. In answer to paragraph 9 of plaintiffs' amended peti-

tion, these defendants deny that the 66th General Assembly "attempted" to enact House Bill No. 50, and allege that said 66th General Assembly did enact said House Bill No. 50. Further answering the allegations of said paragraph 9, these defendants deny that said House Bill No. 50 is a special law, and allege that said House Bill is a general law; and further aver that, even though the next decennial census will not occur until the calendar year of 1960, other constitutional charter cities may, before the expiration date of said House Bill No. 50, enter the class of cities having a population of over 700,000 by the extension of their limits to include areas having a sufficient population to bring their total population to a number in excess of 700,000. These defendants further aver that, even though no other city may enter the class, said House Bill No. 50 is a general law, and that as such it is a valid and binding enactment of the General Assembly of the State of Missouri. It is a general law inasmuch as it relates to a municipality of the State of Missouri which has been placed by the Constitution of the State in a classification separate and distinct from the four general classes of cities and separate and distinct from other constitutional charter cities provided for in the Constitution, being designated by name in Section 31 of Article VI, whereby it is recognized both as a city and as a county.

[fol. 14] 7. These defendants further state that House Substitute for House Bill No. 50 was designed to meet a definite emergency in the City of St. Louis resulting from the inadequacy of existing sources of revenue to enable the said city to continue to function both as a city and as a county under established sources of revenue; that this emergency was brought to the attention of the Governor of the State of Missouri by resolution of the Board of Aldermen of the City of St. Louis adopted on the 19th day of May, 1950; and that by resolutions adopted on October 19, 1951, and November 16, 1951, the General Assembly was urged to enact House Substitute for House Bill No. 50 for the stated reason that the City of St. Louis was in dire need of additional revenue and it was imperative that the said House Committee Substitute for House Bill No. 50 be adopted, so that the financial solvency of the City might be maintained. These defendants further state and show to the Court that

no similar plea on behalf of any other municipality of the State was received by the 66th General Assembly.

8. These defendants further state that the emergency confronting the City of St. Louis resulted from the fact that the expenditures necessary to enable it to function in its dual capacity as a city and a county had increased from $21,752,165 in the fiscal year 1943-1944, to $43,052,595 in the fiscal year 1951-1952. These defendants state that the established sources of revenue in the said City of St. Louis were insufficient to provide funds for these expenditures; that to meet this emergency the General Assembly passed an Enabling Act, approved by the Governor, May 28, 1948, authorizing the City of St. Louis to levy a tax on earnings; that the provisions of this Act terminated on July 17, 1950; that the City of St. Louis levied a tax under authority of the said Enabling Act of 1948, and collected said taxes until July 17, 1950; that the proceeds of the said tax amounted to $12,906,085; that during the two years that the said tax was in effect the City was able to operate without a deficit, but [fol. 15] that since the termination of the said tax, expenditures have exceeded revenue to such an extent that the operating deficit from the year 1951 to 1952 amounted to $3,307,138.

9. These defendants admit the allegations of paragraph 10 of plaintiffs' amended petition.

10. These defendants deny each and every allegation in paragraph 11 of plaintiffs' amended petition contained.

11. These defendants admit each and every allegation in paragraph 12 of plaintiffs' amended petition.

12. These defendants admit that the appropriate committee of the House of Representatives caused a record of its proceedings to be kept on said Bill, but deny that the appropriate committee of the Senate to which said Bill was referred failed to keep a record of its proceedings in regard to said Bill and failed to file with its report the recorded vote of the members of such Senate Committee. On the contrary, these defendants state that the Ways and Means Committee of the Senate to which the said Bill was referred filed with its report to the Senate a record of its proceedings in connection with the said Bill and the recorded vote of the members of the Committee in connection with said bill in compliance with the rule of the Senate

adopted pursuant to said Section 22 of Article III of the Constitution of Missouri, and said rule reading as follows:

> "Rule 44. Each committee shall keep a record of the total number of members present when a bill is finally considered, and this record, and the record of the total number voting favorably and the total number voting unfavorably on said bill, shall be filed by the committee with its report (Constitution, Article III, Section 22)."

[fol. 16] These defendants state that, in accordance with the foregoing rule, the Ways and Means Committee of the Senate of the 66th General Assembly, to which House Substitute for House Bill No. 50 was referred, kept a record of the total number of members present when said bill was finally considered by said committee, and that on the 4th day of March, 1952, when said committee reported said bill, with the recommendation that the bill be passed with Senate Committee Amendment No. 1, it filed with its report the record of the total number of members present when the bill was finally considered, and the record of the total number voting favorably and the total number voting unfavorably on said bill. These defendants further state that said record of the Ways and Means Committee of the Senate has been continuously, and now is, in the custody of the Secretary of the Senate in his office in the State Capitol and will in due course be filed in the office of the Secretary of State.

13. These defendants further state that said Rule No. 44 has been adopted by each Senate since the effective date of the Constitution of 1945; that said rule has been in full force and effect throughout each General Assembly from said date to the present time, and that the several committees of the Senate have uniformly reported on all bills which have been passed by the Senate in each session of the Legislature since the 1945 Constitution became effective in the manner provided in said rule; that the Senate has thereby construed the provisions of Section 22 of Article III of the Constitution to require only that there be recorded the number of members of a committee voting for a bill and the number voting against such bill, and such legislative

construction, existing from the date of adoption of the Constitution, and being reasonable and proper, should be recognized and approved by the courts.

14. These defendants further state that Section 30 of Article III of the Constitution of Missouri provides:

> [fol. 17] "No bill shall become a law until it is signed by the presiding officer of each house in open session, who first shall suspend all other business, declare that the bill shall now be read and that if no objection be made he will sign the same. If in either house any member shall object in writing to the signing of a bill, the objection shall be noted in the journal and annexed to the bill to be considered by the Governor in connection therewith. When a bill has been signed, the secretary, or the chief clerk, of the house in which the bill originated shall present the bill in person to the governor on the same day on which it was signed and enter the fact upon the journal."

15. These defendants state that pursuant to the foregoing constitutional provision the President of the Senate announced on the 2nd day of April, 1952, in open session of the Senate, that all other business would be suspended and House Substitute for House Bill No. 50, having passed both branches of the General Assembly, would be read at length by the Secretary, and that if no objections were made the bill would be signed by the President, to the end that it might become a law. These defendants state that the bill was so read by the Secretary, that no objections were made, and that it was signed by the President in open session.

16. These defendants further state on the 2d day of April, 1952, in open session of the House of Representatives, all other business was suspended while House Substitute for House Bill No. 50 was read at length; that there was no objection, and that the said bill was signed by the Speaker to the end that it might become a law.

17. These defendants admit that the Charter of the City of St. Louis was duly adopted by the voters of said city on June 30, 1914, and deny each and every other allegation contained in paragraph 14 of plaintiffs' amended petition. [fol. 18] Further answering said paragraph 14, these de-

fendants state that the case of Carter Carburetor Corporation against the City of St. Louis was decided upon the ground that no statutory authority existed for the levy of an earnings tax by the City of St. Louis, and that, in view of the provisions of House Substitute for House Bill No. 50, statutory authority does now exist for the adoption of Ordinance No. 46222, and did exist at the time of its enactment.

18. These defendants deny each and every allegation of paragraphs 15, 16 and 17 in plaintiffs' amended petition contained.

Wherefore, the premises considered, these defendants pray the Court to interpret and construe the sections of the Constitution of Missouri cited by plaintiffs, to wit, Sec. 40 of Art. III, particularly Subdivisions 21 and 30 thereof; Sec. 42 of Art. III; Sec. 11 (f) of Art. X; Sec. 3 of Art. X; Sec. 10 of Art. I, and Sec. 22 of Art. III, and to enter its declaratory judgment adjudging and decreeing that the said Act was not passed in violation of and does not violate any of the foregoing provisions of the Constitution of Missouri.

IN CIRCUIT COURT OF THE CITY OF ST. LOUIS

AGREED STATEMENT OF FACTS

The respective parties hereto agree that the facts in this cause are as follows, subject to the right of any party to object to the relevancy, materiality or competency of any fact herein stated. It is further agreed that the defend- [fol. 19] ant's motion to strike overruled by the trial court November 10, 1952, is hereby renewed as to all of plaintiff's evidence in support of paragraphs 12 and 13 of plaintiffs' first amended petition and objection is made to the admission of said testimony for the reasons therein stated.

1. Plaintiff Frank Walters is a resident of the City of St. Louis and plaintiff Edward Williams, Jr., is a resident of St. Louis County, Missouri. Both are employed by defendant Shapleigh Hardware Co. in the City of St. Louis as truck drivers. Defendant Shapleigh Hardware Co. is a corporation organized and existing under the laws of Missouri and has its principal place of business in St. Louis,

Missouri. Defendant City of St. Louis is a municipal corporation, organized under a special charter adopted pursuant to constitutional grant of authority. Defendant Joseph M. Darst is the duly elected, qualified and acting Mayor of the City of St. Louis, and the defendant Del L. Bannister is the duly elected, qualified and acting Collector of Revenue of the City of St. Louis and as such is in charge of the collection of all taxes, including taxes levied under and pursuant to Ordinance 46222. Plaintiffs are wage earners and defendant Shapleigh Hardware Co. pays plaintiffs their wages computed on an hourly basis and makes such payments to plaintiffs on a weekly basis; defendant Shapleigh Hardware Company has to the date of the submission of this cause withheld from the wages of plaintiff Frank Walters the amount of $5.35 and from the wages of Edward Williams, Jr., the amount of $6.43, and will continue to do so until some final adjudication with respect to the validity of said Ordinance 46222 is obtained. Defendant Shapleigh Hardware Co. lays no claim to the funds in question.

2. House Substitute for House Bill No. 50 (now known as V. A. M. S., Secs. 92.110-92.200) was passed by the 66th General Assembly of the State of Missouri in order to en- [fol. 20] able constitutional charter cities with a population of over 700,000 to adopt a so-called earnings tax; it is requested that said House Bill No. 50 be judicially noticed and be incorporated herein by reference. Defendant City of St. Louis is a constitutional charter city having a population of more than 700,000 persons according to the Federal decennial census of 1950, and is the only municipality having a population of more than 700,000 persons within the State of Missouri. The next Federal decennial census is not scheduled to be taken until 1960.

3. On August 27, 1952, the Board of Aldermen enacted into law Ordinance 46222, a so-called earnings tax ordinance, and on August 28, 1952, defendant Del L. Bannister did issue on behalf of defendant City of St. Louis, pursuant to Section Nine of said ordinance, in pamphlet form, certain information, instructions, and regulations as a guide to taxpayers. A copy of said ordinance and said pamphlet is hereto attached, marked Plaintiffs' Exhibit "A," and is incorporated herein by reference, pursuant to which ordi-

nance and enabling act defendant Del L. Bannister claims the funds withheld from the wages of plaintiffs by defendant Shapleigh Hardware Co.

4. The constitutional provisions of Article III, Section 40; Article III, Section 42; Article X, Section 11 (F); Article III, Section 22; Article X, Section 3, and Article I, Section 10 of the Constitution of the State of Missouri of 1945 were in full force and effect at all times mentioned in plaintiffs' petition and are hereby incorporated by reference as though fully set out. The Fourteenth Amendment of the Constitution of the United States was in full force and effect at all times mentioned and is hereby incorporated by reference as a part of this record. No notice setting forth the substance of House Substitute for House Bill No. 50 or any intention to apply therefor was published in the locality of the City of St. Louis thirty days [fol. 21] prior to the introduction of said bill into the General Assembly. All constitutional provisions, state or Federal, legislative enactments, ordinances or city charters are stipulated to have been well pleaded, although no admissions are made as to their applicability and effect, and are hereby incorporated into this stipulation as though fully set out.

5. The provision of said House Substitute for House Bill No. 50 found in Section 11 of said bill and providing the term of said bill shall expire April 1, 1954, was first introduced and approved on March 12, 1952, as Senate Amendment No. 3 to said House Bill, by Senator Garten. Prior to this amendment there had been no time limit on said bill. (See Senate Journal, p. 1832.)

6. The rolls of said House Substitute for House Bill No. 50, together with all amendments to said bill accepted or rejected and the committee reports of the respective houses on said bill are kept in a bound volume in the office of the Secretary of State at Jefferson City, Missouri, as required by R. S. Mo. 1949, Section 28.040. Said House Bill No. 50 was referred to the Committee on Municipal Corporations in the House of Representatives. Filed with the original bill in the office of the Secretary of State is the record of the vote of the names of the members of that Committee who voted favorably on said bill and the names of the members who voted unfavorably and it is agreed that the vote was so taken and recorded in the manner and means set out in said

Committee's report. The rule of the House covering the matter of reports by committees on bills is Rule No. 47, set out at page 55 of the Journal of the House of the 66th General Assembly, and reads as follows:

> "Rule 47. All bills reported back to the House shall be reported on the authority of a majority vote of a quorum of the committee to which said bill was referred [fol. 22] and a record thereof entered upon the records of the meeting of the committee at which the vote was taken. The recorded vote of the members of the committee shall be filed with all reports on bills. (Sec. 22, Art. III, Const.)"

In the Senate the bill was referred to the Committee on Ways and Means and its report appears in the Journal of the Senate for March 4, 1952, at page 1771, and reads as follows:

> "Reports of Standing Committees.
>
> "Senator Webbe, Chairman of the Committee of Ways and Means, submitted the following report:
>
> "Mr. President: Your Committee on Ways and Means, to which was referred House Substitute for House Bill No. 50, begs leave to report that it has considered the same and recommends that the bill do pass, with Senate Committee Amendment No. 1."

The rule of the Senate concerning the filing of committee reports with bills is Rule No. 44, which is set out at page 27 of the Journal of the Senate of the 66th General Assembly, and is as follows:

> "Rule 44. Each committee shall keep a record of the total number of members present when a bill is finally considered; and this record and the record of the total number voting favorably and the total number voting unfavorably on said bill, shall be filed by the committee with its report. (Constitution, Art. III, Sec. 22.)"

The report of the Ways and Means Committee of the Senate filed with the Secretary of the Senate and by the Secretary of the Senate with the Secretary of State in the

State of Missouri, on or about December 4, 1952, shows that ten members of the Committee were present when the Bill [fol. 23] was considered; that nine members of the Committee voted to recommend that the bill do pass, and one member did not vote. The names and the identity of the individual members of the Committee and how they voted was not recorded and does not appear on the Committee's report.

Annexed hereto, marked Defendants' Exhibit 4, and made a part hereto by reference is a certified copy of the record in the said Senate Committee duly certified by the Secretary of State of the State of Missouri, under the date of the 4th day of December, 1952, as filed with the Secretary of State on or about said date; said record was not in said rolls when the rolls of said bill were bound in the office of the Secretary of State.

7. It is stipulated that pages 3849-3889 of the Debates in the Constitutional Convention leading up to our Constitution of 1945 may be judicially noticed by this court and incorporated into this record as though fully set out.

8. It is stipulated that the report of the Senate Ways and Means Committee recommending the passage of said House Bill No. 50 was made in the same manner as the reports of the several committees of the several sessions of the Senate in the 63rd, 64th, 65th and 66th General Assemblies, on all bills passed at each of said sessions thereof, as shown by the journals of the Senate of these sessions of the General Assembly and the rolls of said bills as filed in the office of the Secretary of State, each one of which was equally subject to the provisions of Section 22 of Article III of the Constitution of Missouri.

9. It is agreed that the Journal of the House of the 66th General Assembly at page 2129 contains the following entry:

> "All other business was suspended while House Bills Nos. 184, 36, 501, 325, Senate Substitute for House Bill No. 271, House Bill No. 232, House Committee Substi- [fol. 24] tute for House Bill 227, Senate Committee Substitute for House Bill No. 78, Senate Committee Substitute for House Bill No. 76, Senate Committee Substitute for House Bill No. 66, House Bill No. 484, House Bill No. 465, House Substitute for House Bill

No. 50, House Joint Concurrent Resolution No. 11, House Bill No. 11 and House Committee Substitute for House Bills 55 and 166 were read at length and there being no objection, were signed by the Speaker to the end that they may become a law."

10. It is agreed that the Journal of the Senate of the 66th General Assembly at page 1955 contains the following entry:

"The President announced that all other business would be suspended and House Substitute for House Bill No. 50, having passed both branches of the General Assembly, would be read at length by the Secretary, and if no objections be made the bill would be signed by the President to the end that it may become a law. No objections being made, the bill was so read by the Secretary and signed by the President."

11. The Board of Aldermen of the City of St. Louis by Resolution adopted on the 19th day of May, 1950, directed the attention of the Governor to the inadequacy of existing sources of revenue to enable the City to continue to function both as a city and county and requested that he call a special meeting of the General Assembly for the purpose of continuing the authorization of the defendant City of St. Louis to levy an earnings tax, a true copy of which Resolution is hereto annexed and marked Exhibit 1, and by further Resolution adopted on the 19th day of October, 1951, being Resolution No. 12, and Resolution No. 17, adopted on the 16th day of November, 1951, the Board of Aldermen further urged the General Assembly to adopt an earnings tax measure for the relief of the defendant City, said Resolu- [fol. 24a] being hereto annexed and made a part hereof and marked Exhibits 2 and 3, respectively.

12. It is further stipulated and agreed that expenditures of the defendant City of St. Louis in its dual capacity as a city and county for the fiscal year 1943-1944 amounted to $21,752,165, and that the expenditures by the defendant City in said dual capacity in the fiscal year 1951-1952 amounted to $43,052,595. Established sources of revenue, absent an earnings tax, or an increase of other taxes, or a levy of additional taxes, are insufficient to meet the requirements of appropriations as passed by the Board of Aldermen of

the defendant City. In the fiscal year 1951-1952 the operating deficit of the City amounted to $3,307,138. It is further agreed that the enabling act approved by the Governor on the 28th day of May, 1948, authorizing the City to levy a tax on earnings for the period ending July 17, 1950, and the tax levied pursuant to said act of 1948, yielded a tax during the two-year period of the existence of said ordinance amounting to $12,906,085, and that during the two years that said tax was in effect the City was able to operate without a deficit. It is further agreed that the general property tax rate of the City of St. Louis for general municipal purposes, including levies for the Public Library, the Art Museum and the Zoological Park, was $1.37 per $100 of assessed valuation for the year 1948; $1.37 for the year 1949; $1.55 for the year 1950; $1.59 for the year 1951, and $1.59 for the year 1952.

[fol. 25] In Circuit Court of the City of St. Louis

Plaintiff's Exhibits to Petition and Statement of Facts

City of St. Louis

Earnings Tax

Information, Instructions and Regulations Relating to the Earnings Tax, as Imposed by Ordinance No. 46222

City of St. Louis
Approved August 28, 1952

Issued by Del. L. Bannister, Collector of Revenue
13 City Hall, St. Louis 3, Missouri

[fol. 25a]

Earnings Tax

Regulations

Foreword

In issuing this booklet it may be best to direct attention to the fact that this is a tax—insofar as *individuals* are concerned—only on salaries, wages and other compensation, and is not in any sense a Comprehensive Income tax, since

income from other sources such as dividends, rents, interest, etc. are not taxable.

This first issue of the rules and regulations, which is flexible, is intended as a guide to those subject to the Earnings Tax and will be supplemented from time to time as may be necessary.

The Collector is ready and willing to assist any taxpayer in fulfilling his obligation and is available for hearings and for the issuance of information.

Del. L. Bannister, Collector.

[fol. 25b] 1. Effective Date

The "Earnings Tax" as imposed by virtue of Ordinance No. 46222 of the City of St. Louis, will apply to all wages, salaries, commissions and other compensation Earned after August 31, 1952.

The Earnings Tax is Not imposed on wages earned Prior to August 31, 1952, but Received After that date.

The date on which wages are Earned and not when wages are Received is the determining factor.

2. Definitions

1. Wages shall include salaries, wages, commissions, and other compensation for personal services.

> Wages, when not paid for in money, will be measured by the fair market value of the merchandise, stock, bonds, room or board, or other considerations given to the employee.

2. Net Profits—The net income of any association, business or corporation remaining after deducting the necessary expenses of operation from the gross profits or earnings.

1. All of the ordinary and necessary expenses incurred to produce said income, including rentals or other payments required to be made as a condition to the continued use or possession of property to which the taxpayer has not taken or is not taking title, or in which the taxpayer has no equity;

2. All losses, actually sustained in said business, including a reasonable allowance for exhaustion, depreciation, ob-

solescence, or wear and tear of property in said business;

3. Debts arising from said business actually ascertained to be worthless and charged off within the year;

4. All taxes paid within the year imposed by authority of the United States or its territories or possessions, or under authority of any state, county, school district or municipality or other taxing subdivision of any state, not including those assessed against local benefits and inheritance taxes.

5. All interest paid within the year on taxpayer's indebtedness.

6. Contributions or gifts made by the taxpayer within the [fol. 25c] taxable year to corporations, associations and societies organized and operated exclusively for religious, charitable, scientific or educational purposes, or for the prevention of cruelty to children and animals, no part of the net earnings of which inures to the benefit of any private stockholder or individual, to an amount not in excess of 5 per centum of the amount of the taxpayer's net income on which tax is paid.

3. Who Are Employers

An employer is any individual, association, corporation (including a corporation not organized for profit), governmental administration, agency, arm, authority, board, body, branch, bureau, department, division, sub-division, section or unit, or any other entity, who or that employs one or more persons on a salary, wage, commission, or other compensation basis.

It includes organizations, such as religious and charitable organizations, hospitals, schools, educational institutions, social organizations, and societies and whether organized and operating for profit or not.

4. Who and What Is Taxed

4A Individuals—Resident

The tax is imposed on salaries, wages, commissions and other compensation earned after August 31, 1952, by residents of the City of St. Louis, irrespective of where such wages may be earned.

An Earnings Tax return is required after January 1st and on or before March 30th, by individuals whenever any part of the wages or salaries of the individual have not been subjected to withholding by the employer and remittance for the tax must accompany the return. (See Section 12-A of Regulations).

An annual Earnings Tax return is Not required by an individual taxpayer from all of whose wages or earnings the tax has been withheld by an employer or employers.

Non-Resident

The tax is imposed on salaries, wages, commissions and other compensation earned after August 31, 1952, by non-residents for work done or services performed or rendered within the City of St. Louis.

4-B Professional and Business Men: See Section 12-B of Regulations

4-C Corporations: See Section 12-C of Regulations

[fol. 25d] 5. Rate of Tax

The rate of tax is one-half of one per cent on wages or net profits as herein defined.

6. Returns of Tax Withheld Required by Employer

Each employer is required to make a return monthly and pay to the Collector of Revenue the amount of tax which he has deducted from the salary, wage, commission or other compensation of the individual employee; less a collection compensation of 3 per cent of the amount of tax withheld.

Each employer shall make his return and pay to the Collector on the last day of each month, the amount of taxes withheld from the employees for the preceding month, for example: The amount of taxes deducted during the month of September shall be paid on or before the last day of October.

The form of the Withholding Tax Return will require only the following information be given:

1. Payroll period,
2. Number of employees subject to tax,

3. Total Payroll,
4. Taxable Earnings for period,
5. Actual Tax withheld,
6. Collection Allowance—3% of tax withheld,
7. Amount due.

The remittance for the amount of tax must accompany the return.

The Collector will not require the filing of a copy of the employer's payroll, or the list of the employees from whom the tax was withheld, or the individual accounts or amounts.

7. Records to Be Kept

Employers are required to keep adequate and complete records covering all wage payments, either on regular payroll forms, or on such forms as may be used in the usual accounting practice for their particular type of business.

8. Bonus Payments

Bonus payments, commissions, vacation pay, payment for over-time, etc., are taxable when credited to the account of the employee, provided they have been earned after August 31, 1952.

[fol. 25e] Commissions

A taxpayer whose earnings are derived solely from commissions, where no employer-employee relationship exists, shall be deemed an individual engaged in business as defined in Section One (1) of the Ordinance.

9. Pensions

Pensions are not classified as wages, and are not taxable.

10. Imposition of Tax—Net Business Profits—Residents

1. In the case of trades, businesses, professions, other activities, enterprises or undertakings conducted, operated, engaged in, prosecuted or carried on by residents of St. Louis, there is imposed a tax of one-half of one per cent on the net profits earned after August 31, 1952.

2. For the purpose of construing subsection (c) of section 2 of the Ordinance, the term "a resident or residents"

in the phrase "conducted by a resident or residents" will ordinarily be construed to have reference to the business entity itself, as distinguished from the partners, co-owners, proprietors or other participants in its profits.

3. Generally, a co-partnership, association or other unincorporated enterprise owned by two or more persons will be taxed as an entity. However, in the case of a non-resident partnership, association or unincorporated enterprise which cannot be reached or taxed directly by the City of St. Louis, or if only part of its earnings may be directly taxed, then in either such case, resident partners, co-owners, proprietors or other participants in the profits thereof must include in their declaration and tax return or returns their distributive shares of such profits, or portion thereof not taxed to the business enterprise as an entity, and must pay the tax thereon.

4. The tax imposed under Section 2(c) of the Ordinance is levied upon the entire net profits of the resident trade, business, profession, other activity, enterprise or undertaking, wherever earned, paid or accrued and regardless of the fact that any part of such business or professional activity may have been conducted at or through a place or places of business located outside the City of St. Louis.

11. Imposition of Tax—Net Business Profits—Non-Residents

1. In the case of a non-resident individual, partnership, association, fiduciary or other entity (other than a corpora-[fol. 25f] tion) engaged in the conduct, operation or prosecution of any trade, business, profession, enterprise, undertaking, or other activity, there is imposed a tax of one-half of one per cent of the net profits earned after August 31, 1952, of such trade, business, profession, enterprise, undertaking, or other activity if, and to the extent, conducted in or derived from activity in St. Louis.

2. A non-resident entity within the meaning of subsection (d) of section 2 of the Ordinance which has a branch or branches, office or offices and/or store or stores, warehouse, or other place or places in which the entity's business is transacted, located in the City of St. Louis, shall be considered to be conducting, operating, prosecuting or carry-

ing on a trade, business, profession, enterprise, undertaking or other activity to the full extent of the sum total of all transactions originating or consummated in, by or through such St. Louis branch, office, store, warehouse or other place of business, including (a) billings made on such transactions, or (b) services rendered, or (c) shipments made, or (d) goods, chattels, merchandise, etc., sold, or (e) commissions, fees or other remuneration or payments earned. However, the absence of a branch, office, store, warehouse or other permanent place of business within St. Louis shall not exempt or render non-taxable the net profits of any trade, business, profession, enterprise, undertaking or other activity on which a tax is imposed by this Ordinance.

3. In the case of partnership, association, or other unincorporated business owned by one or more persons the tax, generally, shall be upon said partnership, association, or business enterprise as an entity and not ordinarily upon the partners or members thereof. However, the provisions of Regulation 10 are applicable to render taxable against such resident partners or members their distributive share of any profits of such non-resident entity not taxable under this Ordinance.

4. In determining the proportion or amount of the taxable net profits of a non-resident business entity having a place or places of business within and outside St. Louis, such business entity shall use and apply the provisions set forth in section 3 of the Ordinance. (See Regulation 12.)

12. Net Profits and Earnings Tax Returns

Net profits and Earnings Tax returns are required annually on or before March 30th of each year as follows:

[fol. 25g] A. Individuals

An earnings tax return is required annually by an individual whenever any part of the wages or salaries of the individual has Not been subjected to withholding by the individual's employer or employers.

An annual Earnings Tax return is Not required by any individual taxpayer from all of whose wages or earnings the tax has been withheld by an employer or employers.

B. Professional and Business Men

An annual Earnings Tax return is required of an individual who conducts his own profession or business, such as a lawyer, doctor, or merchant.

A return covering the net earnings of such professional or business man must be made between January 1st and March 30th, of each year on a form obtainable from the Collector of Revenue.

A remittance for the tax must accompany the return.

C. By Corporation, Association or Business

The tax is imposed on the net profits earned after August 31, 1952, by associations, businesses or other activities, conducted by a resident or residents; by associations, businesses or other activities conducted in the City by a non-resident or non-residents; and by all corporations as a result of work done or services performed or rendered, or businesses or other activities conducted in the City.

Where the net profits of a business, association or corporation are derived from work done, services performed or rendered and businesses or other activities conducted both within and without the City, the portion of said net profits subject to tax shall be ascertained as follows:

(1) If such taxpayer shall keep its books and records in such a manner as to show the portion of its net profits which is reasonably attributable to work done, services performed or rendered, and business or other activity conducted in the City, then such portion of said net profits shall be subject to said tax.

(2) If the books and records of such taxpayer are not kept in the manner set out in (1), then the portion of the entire net profits of such taxpayer subject to the tax shall be ascertained by multiplying said entire net profits by an allocation percentage which shall be determined as follows:

(a) The percentage which the Average value of Real and Personal Property (book value), in the City bears to the [fol. 25h] total Average value of Real and Personal Property (book value), within and without the City.

(b) The percentage which the Gross Receipts in the City

bears to the total Gross Receipts within and without the City.

(c) The percentage which Wages, Salaries and other Personal Service Compensation (exclusive of general executive officers), in the City bears to the total Wages, Salaries and other Personal Service Compensation (exclusive of general executive officers), within and without the City.

The percentages so obtained shall be added and the total divided by the number of percentage factors Used.

Example 1:

Corporation having places of business in St. Louis, Chicago and Dallas—

		Total	St. Louis	Percentage
Property	(a)	$100,000.00	$50,000.00	50.00%
Receipts	(b)	500,000.00	200,000.00	40.00%
Wages	(c)	250,000.00	82,500.00	33.00%
				3)123.00%
Allocation Percentage				41.00%

Example 2:

Same corporation owning no Real or Personal Property—

Receipts	(b)	$500,000.00	$200,000.00	40.00%
Wages	(c)	250,000.00	82,500.00	33.00%
				2)73.00%
Allocation Percentage				36.50%

Example 3:

Same corporation owning Real and Personal Property in St. Louis valued at $50,000.00 and owning no Real or Personal Property outside St. Louis—

Property	(a)	$50,000.00	$50,000.00	100.00%
Receipts	(b)	500,000.00	200,000.00	40.00%
Wages	(c)	250,000.00	82,500.00	33.00%
				3)173.00%
Allocation Percentages				57.67%

The allocation percentage so determined is then applied to the total net profits to determine the portion of the net profits that is subject to the tax.

(3) In those instances where the books and records of the taxpayer are not kept in a manner set out in (1); and the allocation formula set out in (2), if used, would result in inequities to the taxpayer, then the taxpayer may submit an alternate formula in detail, which must, however, have the approval of the Collector.

[fol. 25i] The return covering this tax must be made between January 1st and March 30th, of each year on forms to be furnished by the Collector of Revenue.

A remittance for the tax must accompany the return.

13. Fiscal Year

Whenever the fiscal year of any person or association, business or corporation differs from the calendar year, the return of the taxpayer shall be made within 90 days from the end of the fiscal year unless an extension is granted by the Collector. The amount of tax due shall be paid at the time the return is filed.

14. Penalties

1. All taxes imposed by this ordinance and remaining unpaid after they have become due shall bear interest at the rate of six per cent (6%) per annum, and the delinquent taxpayer shall be liable for said tax and interest, and, in addition thereto, to a penalty of one per cent (1%) of the

amount of the unpaid tax for each month or fraction of a month for the first six (6) months of delinquency.

2. All taxes imposed by this ordinance, together with all interest and penalties, shall be recoverable by the City as other debts of like amount are recoverable.

3. Any person or taxpayer who shall fail, neglect or refuse to make any return required by this ordinance, or any employer who shall fail, neglect or refuse to withhold or pay over to the City any amount of tax subject to withholding hereunder, or any person or taxpayer who shall refuse to permit the Collector, or his duly authorized deputy or agent, to examine his books, records or papers, or who shall knowingly make an incomplete, false or fraudulent return, or who shall attempt to do anything whatsoever to avoid the full disclosure of the amount of earnings or profits, shall be deemed guilty of a misdemeanor and shall be subject to a fine of not more than Five Hundred Dollars ($500.00) or by imprisonment for not more than six (6) months, or both such fine and imprisonment.

4. All information pertaining to the earnings tax is confidential and penalty is provided for divulging any information by any City employee.

15. Employee's Withholding Statement

Every employer should furnish each employee with a statement of the tax withheld. This form will not be furnished by the Collector of the Revenue but may be on any form prescribed by the employer.

[fol. 25j] Ordinance 46222

An ordinance levying and imposing an earnings tax for general revenue purposes of one-half of one per cent on salaries, wages, commissions and other compensation earned after August 31, 1952, by residents of the City of St. Louis; on salaries, wages, commissions and other compensation earned after August 31, 1952, by non-residents of the City, for work done or services performed or rendered in the City; on the net profits earned after August 31, 1952, of associations, businesses, or other activities conducted by a resident or residents of the City; on the net profits earned after August 31, 1952, of associations, businesses, or other

activities conducted in the City by a non-resident or non-residents; and on the net profits earned after August 31, 1952, by all corporations as a result of work done or services performed or rendered and business or other activities conducted in the City; prescribing a formula for the ascertainment of the net profits subject to tax of any corporation, or association or business conducted in whole or in part by non-residents of the City, in any case in which the work done, services performed or rendered, and business or other activities conducted are done, performed, rendered, or conducted both within and without the City; authorizing any such taxpayer to file with the Collector an application for an alternative method of allocation or apportionment of the net profits reasonably attributable to work done, services performed or rendered, and business or other activities conducted in the City; prescribing a formula for the ascertainment of earnings subject to tax of any non-resident individual in any case in which the work done, services performed or rendered, and business or other activities conducted are done, performed, rendered or conducted both within and without the City, and empowering the Collector to determine by rule or regulation a different apportionment of such earnings as are reasonably attributable to work done, or services performed or rendered in the City in cases where the services rendered are of a peculiar nature, or where the basis of compensation is unusual, or for any other reason; providing for the filing of returns and payment of the tax by individuals, associations, businesses, corporations, fiduciaries, and other entities, and for the furnishing of information by such taxpayers and by employers; imposing on employers the duty of collecting the tax at the source; prescribing the duties and powers of the Collector; providing for interest and penalties on delinquencies; providing that the divulgence of confidential information or the failure, neglect, or refusal to make any return required under this ordinance, or the failure, neglect, or refusal of any employer to withhold or pay over to the City any amount of tax subject to withholding under this ordinance, or the refusal to permit authorized examinations by the Collector, or the making, knowingly, of an incomplete, [fol. 25k] false, or fraudulent return, or the attempt to do

anything whatsoever, to avoid the full disclosure of the amount of earnings or profits, shall constitute a misdemeanor; providing generally for the administration and enforcement of this ordinance and the collection of the tax; empowering the Collector to promulgate necessary rules and regulations for the administration of the tax; providing that income exempt from the state income tax laws shall be exempt from taxation under the provisions of this ordinance; authorizing every employer collecting and remitting the tax to deduct and retain therefrom three per cent (3%) of the total amount withheld by such employer; containing a separability clause; repealing Article XIV of Chapter 23 of the Revised Code of the City of St. Louis, Missouri, 1948; and containing an emergency clause.

Be it ordained by the City of St. Louis, as follows:

Section One. As used in this ordinance, the following words shall have the meaning ascribed to them in this section, except where the context clearly indicates or requires a different meaning:

"Association"—A partnership, limited partnership, or any other form of unincorporated business or enterprise, owned by two or more persons.

"Business"—An enterprise, activity, profession, trade or undertaking of any nature conducted for profit or ordinarily conducted for profit, whether by an individual, association, or any other entity other than a corporation.

"City"—The City of St. Louis.

"Collector"—The Collector of the Revenue of The City of St. Louis.

"Corporation"—A corporation or joint stock association organized under the laws of the United States, the State of Missouri, or any other state, territory, or foreign country or dependency.

"Employer"—An individual, association, corporation, (including a corporation not for profit) governmental administration, agency, arm, authority, board, body, branch, bureau, department, division, subdivision, section or unit, or any other entity, who or that employs one or more persons on a salary, wage, commission, or other compensation basis,

whether or not such employer is engaged in business as hereinbefore defined.

"Net Profits"—The net income of any association, business or corporation remaining after deducting the necessary expenses of operation from the gross profits or earnings.

"Non-resident"—An individual, association, business, corporation, fiduciary or other entity domiciled outside the City.

[fol. 251] "Person"—Every natural person, association, business or fiduciary. Whenever the term "person" is used in any clause prescribing and imposing a penalty, the term, as applied to associations, shall mean the partners thereof, and, as applied to corporations, the officers thereof.

"Resident"—An individual, association, business, corporation, fiduciary or other entity domiciled within the City.

"Taxpayer"—A person, whether an individual, association, business, corporation, fiduciary, or other entity required hereunder to file a return of earnings or net profits, or to pay a tax thereon.

Section Two. A tax for general revenue purposes of one-half of one per centum is hereby imposed on (a) salaries, wages, commissions and other compensation earned after August 31, 1952, by resident individuals of the City, including the entire distributive share of any member of a partnership or association, less the amount thereof, if any, which may be shown to have been taxed under the provisions hereof to said association or partnership; and on (b) salaries, wages, commissions and other compensation earned after August 31, 1952, by non-resident individuals of the City, for work done or services performed or rendered in the City; and on (c) the net profits earned after August 31, 1952, of associations, businesses, or other activities conducted by a resident or residents, and on (d) the net profits earned after August 31, 1952, of associations, businesses, or other activities conducted in the City by a non-resident or non-residents; and (e) on the net profits earned after August 31, 1952, by all corporations as a result of work done or services performed or rendered, and business or other activities conducted in the City.

Said tax shall first be levied, collected and paid with respect to that portion of salaries, wages, commissions, other compensation and net profits earned after August 31, 1952, and prior to January 1, 1953, and thereafter said tax shall be levied, collected and paid on the basis of the calendar year; provided, however, that where the fiscal year of any person, association, business or corporation differs from the calendar year, the tax shall first be applied to that portion of the net profits for the fiscal year as shall be earned after August 31, 1952, and thereafter on the fiscal year basis.

Section Three. The net profits subject to tax of any corporation, or of any association or business conducted in whole or in part by non-residents of the City, in any case in which the work done, services performed or rendered, and business or other activities conducted are done, performed, rendered or conducted both within and without the City, shall be ascertained as follows, to-wit:

[fol. 25m] (a) If such taxpayer shall keep its books and records in such a manner as to show the portion of its net profits which is reasonably attributable to work done, services performed or rendered, and business or other activity conducted in the City, then such portion of said net profits shall be subject to said tax.

(b) If the books and records of such taxpayer are not kept in such a manner so as to show the portion of its net profits which is reasonably attributable to work done, services performed or rendered, and business or other activity conducted in the City, then the portion of the entire net profits of such taxpayer subject to tax shall be ascertained by multiplying said entire net profits by an allocation percentage which shall be determined as follows, towit:

(1) The percentage which the average value of such taxpayer's real and tangible personal property within the City during the period covered by its return bears to the average value of all its real and tangible personal property wherever situated during such period shall first be ascertained.

(2) The percentage which the gross receipts of such taxpayer derived from business within the City during the period covered by its return bear to the total of such gross

receipts wherever derived, shall then be ascertained. Gross receipts derived from business within the City shall be the amount of gross receipts from (a) sales (including also sales of services), except those negotiated or effected in behalf of such taxpayer by agents or agencies, chiefly situated at, connected with, or sent out from premises for the transaction of business owned or rented by such taxpayer outside the City, and (b) rentals or royalties from property situated, or from the use of patents, within the City.

(3) The percentage which the total wages, salaries and other personal service compensation during the period covered by its return, of its employees within the City, except general executive officers, bears to the total wages, salaries and other personal service compensation during such period of all of such taxpayer's employees within and without the City, except general executive officers, shall then be ascertained.

(4) The percentages determined in accordance with subparagraphs 1, 2 and 3 above, or such of the aforesaid paragraphs as shall be applicable to the particular taxpayer's business, shall be added together and the total so obtained shall be divided by the number of percentages used in arriving at said total. The result so obtained shall be the allocation percentage.

(c) If any such taxpayer believes that the methods of allocation or apportionment hereinbefore prescribed have [fol. 25n] operated or will so operate as to subject it to taxation on a greater portion of its net profits than is reasonably attributable to work done, services performed or rendered, and business or other activities conducted in the City, it shall be entitled to file with the Collector a statement of its objections and of such alternative method of allocation or apportionment as it believes to be proper under the circumstances and in such manner and with such detail and proof and within such time as the Collector may reasonably prescribe; and thereupon if the Collector shall conclude that the methods of allocation or apportionment hereinabove provided are in fact inapplicable or inequitable, he shall redetermine the net profits subject to tax by such other method of allocation or apportionment as seems best

calculated to assign to the City for taxation the portion of the net profits reasonably attributable to work done, services performed or rendered, and business or other activities conducted in the City, not exceeding, however, the amount which would be arrived at by the application of the methods of allocation or apportionment hereinabove provided.

Section Four. The earnings subject to tax of any non-resident individual, in any case in which the work done, services performed or rendered, and business or other activities conducted are done, performed, rendered or conducted both within and without the City, shall be ascertained as follows, to-wit:

(a) If the amount of such earnings depends on the volume of business transacted by such individual, then the portion of such earnings subject to tax shall be the portion of such earnings which the volume of business transacted by such individual in the City bears to volume of business transacted by him within and without the City.

(b) In all other cases, the portion of such earnings subject to tax shall be the portion of such earnings which the total number of working days employed within the City bears to the total number of working days within and without the City.

(c) If it is impracticable to apportion such earnings as aforesaid either because of the peculiar nature of the services of such individual, or on account of the unusual basis of compensation, or for any other reason, then the amount of such earnings reasonably attributable to work done, or services performed or rendered, in the City, shall be determined in accordance with rules or regulations adopted or promulgated by the Collector for the purpose.

Section Five. Except as hereafter provided each individual, association, business, corporation, fiduciary, or other entity, whose earnings or profits are subject to the tax im- [fol. 25o] posed by this ordinance shall, on or before March 30th of each year, unless an extension is granted by the Collector, make and file with the Collector a return, on a form obtainable from the Collector, setting forth the aggregate amount of salaries, wages, commissions, compensation or net profits earned by such taxpayer during the

preceding calendar year and subject to the said tax, together with such other pertinent information as the Collector may require:

Provided, however, that where the return is made for a fiscal year different from a calendar year, the said return shall be made within ninety days from the end of the fiscal year, unless an extension is granted by the Collector. Such return shall also show the amount of the tax imposed by this ordinance on such earnings and profits. The taxpayer making the said return shall, at the time of filing thereof, pay to the said Collector the amount of tax shown as due thereon:

Provided, however, that where any portion of the tax so due shall have been deducted at the source and shall have been paid to the Collector by the employer making the said deduction, credit for the amount so paid shall be deducted from the amount shown to be due, and only the balance, if any, shall be due and payable at the time of the filing of said return:

Provided, further, that no return shall be required of any taxpayer who has received only wages, salaries, commissions or other compensation and from which the tax has been withheld at the source, as hereinafter provided. The failure of any employer or any taxpayer to receive or procure a return form shall not excuse such employer or taxpayer from making a return or paying the tax due.

Section Six. Every employer within the City who employs one or more persons on a salary, wage, commission, or other compensation basis, shall deduct at the time of the payment thereof, the tax of one-half of one per centum of salaries, wages, commissions or other compensation due by the said employer to the said employee and subject to tax, and shall make his return monthly and pay to the said Collector, not later than the last day of each month, the amount of taxes so deducted for the calendar month next preceding the month in which the return is required to be filed. Said return shall be on a form or forms obtainable from the Collector and shall be subject to the rules and regulations prescribed therefor by the said Collector. Every such employer shall furnish each employee with a statement of the amount of the tax withheld. The failure

of any employer to deduct or withhold at the source the amount of the tax due from the employee shall not relieve the employee from the duty of making a return and paying the tax.

Section Seven. Every employer collecting and remitting the tax herein provided for on any resident or non-resident [fol. 25p] employee shall be entitled to deduct and retain three per centum of the total amout so collected as compensation to the employer for collecting and remitting the tax.

Section Eight. The income referred to in Sections 143.120 to 143.150, RSMo 1949, as not being subject to the state income tax shall not be taxable under this ordinance.

Section Nine. It shall be the duty of the Collector to collect and receive the tax imposed by this ordinance. In addition to keeping the records now required by law and paying over the proceeds from the collection of taxes to the treasurer of the City, as now provided by law, the Collector shall keep an accurate and separate account of all such tax payments received by him, showing the name and address of the taxpayer and the date of the payments. The Collector is hereby charged with the enforcement of the provisions of this ordinance and is hereby empowered to adopt and promulgate and to enforce rules and regulations relating to any matter or thing pertaining to the administration and enforcement of the provisions of this ordinance, including provisions for the re-examination and correction of returns and payments alleged or found to be incorrect or as to which an overpayment or underpayment is claimed or found to have occurred.

The Collector or any agent or employee authorized in writing by him is hereby authorized to examine the books, papers and records of any employer or supposed employer, or of any taxpayer or supposed taxpayer, in order to verify the accuracy of any return made, or if no return was made, to ascertain the tax imposed by this ordinance. Every such employer or supposed employer, or taxpayer or supposed taxpayer, is hereby directed and required to give to the said Collector or his duly authorized agent or employee

the means, facilities and opportunity for such examinations and investigations as are hereby authorized.

The Collector is hereby authorized to examine any person concerning any income which was or should have been returned for taxation and to this end may order the production of books, papers and records and the attendance of all persons before him, whether as parties or witnesses, whom he believes to have knowledge of such income. The refusal of such examination by any employer or taxpayer shall be deemed a violation of this ordinance. Any information obtained as a result of any return, investigation, hearing or verification required or authorized by this ordinance, shall be confidential except for official purposes and except in accordance with judicial order. Any person otherwise divulging such information shall, upon conviction thereof, be deemed guilty of a misdemeanor and shall be subject to [fol. 25q] a fine of not more than Five Hundred Dollars ($500.00) or imprisonment for not more than six (6) months or both such fine and imprisonment for each offense.

Section Ten. All taxes imposed by this ordinance and remaining unpaid after they have become due shall bear interest at the rate of six per cent (6%) per annum, and the delinquent taxpayer shall be liable for said tax and interest, and, in addition thereto, to a penalty of one per cent (1%) of the amount of the unpaid tax for each month or fraction of a month for the first six (6) months of delinquency.

Section Eleven. All taxes imposed by this ordinance, together with all interest and penalties, shall be recoverable by the City as other debts of like amounts are recoverable.

Section Twelve. Any person or taxpayer who shall fail, neglect or refuse to make any return required by this ordinance, or any employer who shall fail, neglect or refuse to withhold or pay over to the City any amount of tax subject to withholding hereunder, or any person or taxpayer who shall refuse to permit the Collector, or his duly authorized deputy or agent, to examine his books, records or papers, or who shall knowingly make an incomplete, false or fraudulent return, or who shall attempt to do anything

whatsoever to avoid the full disclosure of the amount of earnings or profits, shall be deemed guilty of a misdemeanor and shall be subject to a fine of not more than Five Hundred Dollars ($500.00) or to imprisonment for not more than six (6) months, or to both such fine and imprisonment.

Section Thirteen. If any sentence, clause or section or any part of this ordinance is for any reason held to be unconstitutional, illegal or invalid, such unconstitutionality, illegality or invalidity shall not affect or impair any of the remaining provisions, sentences, clauses, sections or parts of this ordinance. It is hereby declared to be the intent of the Board of Aldermen that this ordinance would have been adopted had such unconstitutional, illegal or invalid sentence, clause, section or part thereof not been included therein.

Section Fourteen. Article XIV of Chapter 23 of the Revised Code of the City of St. Louis, Missouri, 1948, is hereby repealed.

Section Fifteen. This being an ordinance fixing a tax rate, an emergency is hereby declared to exist within the meaning of Section 20 of Article IV of the Charter of the City of St. Louis, and this ordinance shall be effective immediately upon its passage and approval by the Mayor.

Approved: August 28, 1952.

[fol. 26] In Circuit Court of the City of St. Louis

Decree—February 5, 1953

Now this day this cause coming on for hearing on the pleadings and the agreed statement of facts heretofore filed and the Court having read and examined the pleadings and the agreed statement and considered the same and the briefs of the counsel herein filed, and being now fully advised in the premises, the Court finds and declares the law to be:

1. That the act of the 66th General Assembly of the State of Missouri, referred to in plaintiffs' petition as House

Bill No. 50, now appearing in Chapter 92 of the 1951 Supplement to the Revised Statutes of Missouri, 1949, as Sections 92.110 to 92.200, inclusive, is a general law applicable to the City of St. Louis; that it was not passed by the General Assembly in violation of Section 40, Paragraphs (21) and (30) of Article III, or Section 42 of Article III, or Section 11(f) of Article X of the Constitution of Missouri, and does not violate any of those provisions of the Constitution relating to local or special laws.

2. That the said act and the ordinance of the City of St. Louis numbered 46,222, adopted and ordained by the City of St. Louis pursuant to said act, did not and do not violate Section 3 of Article X or Section 10 of Article I of the Constitution of Missouri, and did not and do not violate the equal protection of the laws requirements of the 14th Amendment of the Constitution of the United States; that said ordinance and said act do not seek to levy and collect taxes that are not uniform upon the same class of subjects and not within the territorial limits of the City of St. Louis, and that said ordinance and said act are not arbitrary and discriminatory against wage earners as a class or the plaintiffs herein.

3. That said act was passed by the Senate of the General Assembly in accordance with and in compliance with Rule No. 44 of the Senate, and that said rule meets and satisfies the requirements of Section 22 of Article III of the Constitution of Missouri; that the Ways and Means Committee of the Senate to which said House Bill No. 50 was referred kept a record of its proceedings in connection with said bill in accordance with the requirements of Rule [fol. 27] 44 and that this record and the recorded vote of the members of the Committee was filed in the Senate with the report on said bill.

4. That the absence of any provision in the Charter of the City of St. Louis authorizing the adoption of said ordinance No. 46222 does not invalidate said ordinance for the reason that the General Assembly is authorized by Section 1 of Article X of the Constitution of Missouri to delegate the taxing power to the counties and other political subdivisions of the State and has granted power and authority to the City of St. Louis to adopt said Ordinance No. 46222 by the enactment of said House Bill No. 50.

5. That the said act and the said ordinance are not unconstitutional and void and are not in violation of the terms of the Constitution of the Sate of Missouri, as specifically alleged in plaintiffs' petition; that the City of St. Louis was not without authority to adopt said ordinance or to impose the earnings tax levied by said ordinance upon the plaintiff; that the said act of the Legislature and the said ordinance are not illegal and void for the reason that the enforcement of said ordinance would impose multiple taxation on the plaintiffs and other employees similarly situated, and that plaintiffs have failed to establish the allegation of their petition that said ordinance and said act known as House Bill 50 are arbitrary, unreasonable, discriminatory, vague and uncertain, and in violation of said Article I, Section 10, of said Constitution of Missouri and in violation of the due process and equal protection of the laws requirements of the 14th Amendment of the Constitution of the United States.

6. The court, having heretofore determined the issues relating to defendant Shapleigh Hardware Company by order entered the 26th day of January, 1953, hereby confirms said order.

[fol. 28] It is accordingly ordered, adjudged and decreed that the said act of the 66th General Assembly of the State of Missouri, referred to in plaintiffs' petition as House Bill No. 50, now appearing in Chapter 92 of the 1951 Supplement to the Revised Statutes of Missouri, 1949, as Sections 92.110 to 92.200, does not violate any of the aforesaid provisions of the Constitution of Missouri; and that Ordinance No. 46,222 is a lawful exercise by the City of St. Louis of the powers conferred by said law; and it is further ordered, adjudged and decreed that plaintiffs' prayer for injunctive relief be denied and that plaintiffs' petition and plaintiffs' cause of action be dismissed with prejudice to plaintiffs and that the defendants shall have and recover from plaintiffs their costs herein expended.

IN CIRCUIT COURT OF THE CITY OF ST. LOUIS

MOTION FOR NEW TRIAL—Filed February 10, 1953

Come now the plaintiffs in the above captioned cause and move the Court to grant them a new trial in the above entitled cause against all defendants, and for grounds for their motion plaintiffs state:

1) That the Court erred in finding and holding that the act of the 66th General Assembly of the State of Missouri, referred to in plaintiffs' petition as House Bill No. 50, now appearing in Chapter 92 of the 1951 Supplement to the Revised Statutes of Missouri, 1949, as Sections 92.110 to 92.200, inclusive, is a general law applicable to the City of St. Louis, and that it was not passed by the General Assembly in violation of Section 40, Paragraphs (21) and [fol. 29] (30) of Article III, or Section 42 of Article III, or Section 11 (f) of Article X of the Constitution of Missouri, and does not violate any of those provisions of the Constitution relating to local or special laws.

2) That the Court erred in finding and holding that the said act and the ordinance of the City of St. Louis numbered 46222, adopted and ordained by the City of St. Louis pursuant to said act, did not and do not violate Section 3 of Article X or Section 10 of Article I of the Constitution of Missouri, and did not and do not violate the due process and equal protection of the laws requirements of the Fourteenth Amendment of the Constitution of the United States: that the Court erred in finding and holding that said ordinance and said act do not seek to levy and collect taxes that are not uniform upon the same class of subjects and not within the territorial limits of the City of St. Louis, and that said ordinance and said act are not arbitrary and discriminatory against wage earners as a class or the plaintiffs herein.

3) The Court erred in finding and holding:

a) That said act was passed by the Senate of the General Assembly in accordance with and in compliance with Rule No. 44 of the Senate, and that said rule meets and satisfies the requirements of Section 22 of Article III of the Constitution of Missouri.

b) That the Ways and Means Committee of the Senate to which said House Bill No. 50 was referred kept a record of its proceedings in connection with said bill in accordance with the requirements of Rule 44 and that this record and the recorded vote of the members of the Committee was, within the purport and meaning of said Constitutional requirement, filed in the Senate with the report on said bill.

4) That the court erred in finding and holding that the absence of any provision in the Charter of the City of St. [fol. 30] Louis authorizing the adoption of said ordinance No. 46222 does not invalidate said ordinance for the reason that the General Assembly is authorized by Section 1 of Article X of the Constitution of Missouri to delegate the taxing power to the counties and other political subdivisions of the State and has granted power and authority to the City of St. Louis to adopt said Ordinance No. 46222 by the enactment of said House Bill No. 50.

5) That the Court erred in finding and holding:

a) That the said act and the said ordinance are not unconstitutional and void and are not in violation of the terms of the Constitution of the State of Missouri, as specifically alleged in plaintiffs' petition.

b) That the City of St. Louis was not without authority to adopt said ordinance or to impose the earnings tax levied by said ordinance upon the plaintiffs.

c) That the said act of the Legislature and the said ordinance are not illegal and void for the reason that the enforcement of said ordinance would impose multiple taxation on the plaintiffs and other employees similarly situated.

d) That plaintiffs have failed to establish the allegation of their petition that said ordinance and said act known as House Bill 50 are arbitrary, unreasonable, dicriminatory, vague and uncertain, and in violation of said Article I, Section 10, of said Constitution of Missouri and in violation of the due process and equal protection of the laws requirements of the Fourteenth Amendment of the Constitution of the United States.

6) That the Court erred in entering its order of the 26th day of January, 1953, relating to defendant Shapleigh Hardware Company, and in confirming said order.

[fol. 31] 7) That the Court erred in ordering, adjudging and decreeing that the said act of the 66th General Assembly of the State of Missouri, referred to in plaintiffs' petition as House Bill No. 50, now appearing in Chapter 92 of the 1951 Supplement to the Revised Statutes of Missouri, 1949, as Sections 92.110 to 92.200, does not violate any of the aforesaid provisions of the Constitution of Missouri, and that Ordinance No. 46222 is a lawful exercise by the City of St. Louis of the powers conferred by said law; and that the Court further erred in ordering, adjudging and decreeing that plaintiffs' prayer for injunctive relief be denied and that plaintiffs' petition and plaintiffs' cause of action be dismissed with prejudice to plaintiffs.

8) That the judgment is against the law.

9) That the judgment is against the evidence.

10) That the judgment is against the law and the evidence and the law under the evidence.

11) That the judgment is for the wrong party.

Wherefore, for the reasons stated, plaintiffs respectfully move this Honorable Court to grant them a new trial in this cause.

In Circuit Court of the City of St. Louis

Note Re Order Overruling Motion for New Trial and Notation of Appeal—Feb. 12, 1953

And, on the 12th day of February, 1953, said court entered its order overruling said joint motion for new trial, and thereafter on the 13th day of February, 1953, and within the time allowed by law, plaintiffs-appellants filed their notice of appeal and deposited with the Clerk of the Circuit Court the sum of $10 as docket fee in this appeal to the Supreme Court. Receipt of said notice of appeal was acknowledged by respondents in open court, [fols. 32-33] said notice of appeal and acknowledgment of service being in words and figures as follows:

In Circuit Court of the City of St. Louis

[Title omitted]

Notice of Appeal—February 13, 1953

Notice hereby given that Frank Walter and Edward Williams, Jr., plaintiffs above-named, hereby appeal to the Supreme Court of Missouri from the final judgment and overruling of their Motion for New Trial entered in this action on the Fifth day of February, 1953, upon the overruling by the court of the plaintiffs' motion for a new trial, entered February 12, 1953.

Stanley M. Rosenblum, Attorney for Plaintiffs, Address 408 Olive Street.

Dated February 13, 1953.

[fol. 34] In the Supreme Court of Missouri, Court En Banc, April Session, 1953

No. 43,648

Frank Walters and Edward Williams, Jr., Appellants,

vs.

City of St. Louis, a Municipal Corporation; Joseph M. Darst, Mayor of the City of St. Louis; and Del L. Bannister, Collector of the City of St. Louis, Missouri, and Director of the Collection Division of the Department of Finance of the City of St. Louis, Missouri, Respondents

Appeal from the Circuit Court of the City of St. Louis, Division No. 2, Honorable William B. Flynn, Judge

Opinion—Filed June 8, 1953

This action involves the constitutionality of Ordinance No. 46,222 of the City of St. Louis, commonly called and herein referred to as the "earnings tax" ordinance. The trial court upheld its constitutionality and plaintiffs appealed.

Appellants, one a resident of the City and the other a resident of St. Louis County, are wage compensated employees of the Shapleigh Hardware Company, a corporation domiciled and doing business in the City. Since the enactment of the ordinance and pursuant to its provisions, the employer has withheld and unless the ordinance is declared invalid will continue to withhold from their wages as they accrue one-half of one per centum thereof for disbursement to the City in discharge of the tax levied upon their wages under said ordinance. The petition, which names the City, its Mayor, its Collector, and Shapleigh Hardware Company as defendants, prays a judgment declaring the ordinance void, declaring the act of the Legislature which authorized its enactment void, and enjoining the defendants from carrying the ordinance into effect. It appearing to the trial court after submission that no issue was presented [fol. 35] as to Shapleigh Hardware Company, it was conditionally dismissed from the action.

The grounds upon which plaintiffs sought judgment declaring the ordinance void and upon which they assign error of the trial court in refusing to so hold are:

(1) The enabling act of the 66th General Assembly upon which the ordinance is predicated, to wit: House Substitute for House Bill No. 50, now §§ 92.110-92.200 RSMo 1949 V. A. M. S., is violative of the following provisions of the Constitution of Missouri:

(a) Article III, § 40, prohibiting the enactment of local or special laws in the instances set forth in clauses (21) and (30) thereof;

(b) Article X, § 11(f), authorizing enactment of general laws permitting a county or other political subdivision to levy taxes other than whose ad valorem; and

(c) Said House Bill No. 50 was not enacted in compliance with Article III, § 22, requiring each committee of the House and Senate to which a bill is referred to keep a record of its proceedings and report the vote of its members to be filed with all reports thereon.

(2) The ordinance and said House Bill No. 50 are arbitrary, unreasonable, discriminatory, vague and therefore violative of the due process clause of the Constitution of

Missouri, to wit: Article I, § 10; of the due process and equal protection clauses of the Constitution of the United States, to wit: the Fourteenth Amendment thereof; and of Article X, § 3, of the Constitution of Missouri, requiring that taxes shall be uniform upon the same class of subjects within the territorial limits of the authority levying the tax and shall be levied and collected by general laws.

On the 19th day of May, 1950, the Board of Aldermen of the City of St. Louis adopted a resolution stating in part:

"We * * * do hereby take official recognition of the impending financial crisis confronting the City of St. Louis.

"Whereas, the cost of government in the City of St. Louis has increased from approximately $20,000,000 to $40,000,000 [fol. 36] in the last ten years, and the ordinary sources of taxation have not been sufficient to meet this increase in the cost of municipal government, and it has heretofore been necessary to enact an earnings tax in the City of St. Louis for the maintenance of the solvency of our local government; and

"Whereas, the General Assembly of the State of Missouri has heretofore enacted enabling legislation authorizing the City of St. Louis to levy an earnings tax which has been productive of approximately $7,000,000 per year, and the authority heretofore granted by the said General Assembly expires on July 17, 1950, and that thereafter the City of St. Louis will not have authority to continue this vital source of income; and

"Whereas, the loss of the aforesaid income would necessarily result in a curtailment of City services, thus endangering the health, welfare and safety of our citizens.

"Now, Therefore, Be It Resolved, that we * * * do hereby urge the Honorable Forrest Smith, Governor of the State of Missouri, to call a special session of the General Assembly for the purpose of continuing the authorization of this City to levy an earnings tax, and we further request the members of the General Assembly of the State of Missouri to act favorably upon said proposed legislation; * * * *."

The City of St. Louis is a constitutional charter city, having a population of more than 700,000 inhabitants as determined by the decennial census of 1950. Organized

under Article IX, §§ 20-26, Constitution of 1875, in the dual character of both a city and county, it has the unique distinction of being the only city specifically named in the Constitution of 1945, Article VI, § 31. It is also agreed that, although possible, it is a practical certainty no other such constitutional charter city of more than 700,000 inhabitants will come into existence in Missouri during the period of time in which House Bill No. 50 is effective.

(Although not specifically named in the Constitution of 1945, Kansas City was and still is a constitutional charter [fol. 37] city, and, subsequent to the adoption of the 1945 Constitution, University City, Columbia, Springfield, and possibly others, have framed and adopted their own charters. Section 82.010 RSMo 1949 V. A. M. S. recognizes their status in that respect along with that of the City of St. Louis.)

In its dual capacity as a city and county, the expenditures of the City of St. Louis for the fiscal year 1943-1944 amounted to $21,752,165, and its expenditures in said dual capacity in the fiscal year 1951-1952 amounted to $43,052,595. Established sources of revenue, absent an earnings tax, or an increase of other taxes, or a levy of additional taxes, are insufficient to meet the requirements of appropriations as passed by the Board of Aldermen. In the fiscal year 1951-1952 the operating deficit amounted to $3,307,138. The enabling act approved by the Governor on the 28th day of May, 1948, authorizing the City to levy a tax on earnings for the period ending July 17, 1950, and the tax levied pursuant to said act of 1948, yielded a tax during the two-year period of the existence of said ordinance amounting to $12,906,085, and during the two years said tax was in effect the City was able to operate without a deficit.

The enabling act here involved, hereinafter referred to as House Bill No. 50, became effective (unless held to be unconstitutional) on July 29, 1952. Insofar as pertinent, it provides:

§ 92.110. "Any constitutional charter city in this state which now has or may hereafter acquire a population in excess of seven hundred thousand inhabitants, according to the last federal decennial census, is hereby authorized to levy and collect, by ordinance for general revenue purposes,

an earnings tax on the salaries, wages, commissions and other compensation earned by its residents; on the salaries, wages, commissions and other compensation earned by non-residents of the city for work done or services performed or rendered in the city; on the net profits of associations, businesses or other activities conducted by residents; on the net profits of associations, businesses or other activities conducted in the city by non-residents; and on the net [fol. 38] profits earned by all corporations as the result of work done or services performed or rendered and business or other activities conducted in the city."

§ 92.120. Such tax shall not be in excess of one per centum per annum.

§ 92.150. "The net profits or earnings of associations, businesses or other activities, and corporations shall be ascertained and determined by deducting the necessary expenses of operation from the gross profits or earnings."

§ 92.200. The act shall expire April 1, 1954.

Appellants thus state their first contention:

"The gravamen of appellants' charge that House Bill No. 50 is unconstitutional is found in those provisions of our Constitution of 1945 prohibiting special legislation, namely, Article III, Section 40, sub-paragraphs 21 and 30, and Article X, Section 11(f). Simply stated, appellants submit that the classification of constitutional charter cities by population according to the last federal decennial census when read with the final section of the act causing it to expire April 1, 1954, six years before the next federal decennial census, makes the act applicable only to the City of St. Louis under a then existing state of facts and by its very terms fails to hold the class open so that other constitutional charter cities might come within it. This requirement that a statute be "open-ended" in order to avoid the constitutional prohibition against special legislation is well-settled in Missouri; and this fundamental requisite of a general law—its "open-endedness"—is as applicable to the City of St. Louis as to any other political subdivision in this state."

Respondents' answer to this contention is that Article VI, § 31, of the Constitution of 1945, classifying the City

of St. Louis in its dual capacity of city and county and affirming its powers, organization, rights and privileges, being special in its terms, prevails over the general provisions of Article III, § 40, prohibiting the General Assembly from passing any local or special law (clause 21) regulating the affairs of counties and cities, or (clause 30) where a general law can be made applicable.

[fol. 39] Respondents' contention fails, however, to take into consideration the provisions of Article X, § 11(f), of the Constitution, which is as follows: "Nothing in this constitution shall prevent the enactment of any *general law* permitting any county or other political subdivision to levy taxes other than ad valorem taxes for its essential purposes." (Emphasis ours.) By the clear implication of that provision, legislative permission to any city or other political subdivision to enact an earnings tax ordinance can only be granted by a general law. We can attach no other meaning to it. Of course, this does not mean that a general law permitting the levy of such a tax would be local or special because it was operative only in the City of St. Louis, provided it was prospective in its terms so as to become operative in other cities as they come within the classification therein specified. State ex rel. Zoological Board of Control v. City of St. Louis, 318 Mo. 910, 1 S. W. 2d 1021, 1027; State ex rel. Carpenter v. City of St. Louis, 318 Mo. 870, 2 S. W. 2d 713, 718.

Appellants concede the law to be as above stated. They assert, however, that even though House Bill No. 50 purports in the first section thereof (92.110) to be applicable to "any constitutional charter city in this state which now has or may hereafter acquire a population in excess of seven hundred thousand inhabitants, according to the last federal decennial census * * *," yet § 92.200 fixing the expiration date of the act at April 1, 1954, is destructive of the recital in the first section and makes the act applicable only to the City of St. Louis under the existing state of facts, and thereby prevents any other constitutional charter city which hereafter may attain a population of 700,000 from the benefit of its provisions.

In support of their position they rely upon the case of Reals v. Courson, 349 Mo. 1193, 164 S. W. 2d 306. One of the grounds upon which the statute there under considera-

tion was declared unconstitutional unquestionably supports appellants' position in the instant case. However, a re-examination of the Reals case has convinced us that although we were correct in holding the statute there involved unconstitutional upon another ground therein discussed, [fol. 40] we erred in holding it unconstitutional upon the ground above asserted. (It perhaps should be here stated that the ground upon which we base this conclusion was not advanced in the submission of that case.)

That case involved a statute enacted in 1941. It authorized the boards of directors of school districts, formed of cities and towns in counties having more than 200,000 inhabitants and less than 450,000 inhabitants, * * * to issue school bonds. The last section thereof provided that the act should expire January 1, 1946. St. Louis County then was the only county in the State within the range of that classification; and it was, as in the instant case, a practical certainty that no other county would come within that classification during the period in which the statute was to be effective. One of the grounds upon which we held the statute unconstitutional was that the classification therein made was unreasonable and arbitrary in that there were other counties containing school districts similarly situated to which a general law could have been made applicable. As stated, we are convinced the case was soundly ruled on that ground.

But we further said, l.c. 309: "Therefore, we have a legislative enactment classifying counties and thereby school districts so that the act can only apply to the counties —in this instance the county, which on the day of its enactment had the requisite population of more than 200,000 and less than 450,000 inhabitants. It can apply to an existing state of facts only, that is to the one county in Missouri then falling within the classification and therefore, in fact, cannot be said to have created a future class into which other counties might fall." (Cases cited.)

The trouble with the conclusion above quoted is that it denies the well established rule of "open-endedness" to legislation pertaining to cities (or counties or other subdivisions) of a specified classification when it appears with reasonable certainty that no other city (or political sub-

division) will come within the classification during the term of the legislation when the term thereof is of limited duration. To so rule would deny to the General Assembly the right to authorize for a limited period of time the City [fol. 41] of St. Louis to enact an emergency earnings tax ordinance likewise so limited solely because its population was so far in excess of that of any other city that none would come within the classification during the emergency. We think the Constitution does not sanction such discrimination. The fact that a statute is limited as to the time of its duration does not make it local or special so long as it applies to all within, or that may come within, the enumerated class during its effective period. State ex rel. Attorney General v. Lee, 193 Ark. 270, 99 S. W. 2d 835; 50 Am. Jur., Statutes, §§ 514, 515, p. 525. The act here under consideration does precisely that.

All of the cases cited in support of the conclusion reached in the Reals case deal with legislative acts that are to continue in perpetuity unless repealed. They are soundly ruled. It is obvious that limitation of the operation of an act that is to continue in perpetuity to a certain city or cities then comprising a specified classification without leaving it open to operate upon all cities thereafter attaining the same classification, thereby resulting in the possibility of the act becoming applicable to some one or more, but not all, of the same classification, would be to deprive the latter of its benefits. Such an act would run afoul of the rule we long since adopted in this State: "A statute which relates to persons or things as a class is a general law, while a statute which relates to particular persons or things of a class is special." Reals v. Courson, 349 Mo. 1193, 164 S. W. 2d 306, 307, 308, and cases cited therein.

In the instant case, we are dealing with an entirely different type of legislation: legislation of limited duration. By its terms, the enabling act here involved is operative upon any constitutional charter city in this State that now has or may hereafter acquire a population of more than 700,000 prior to its expiration date of April 1, 1954. The conceded fact that it is a practical certainty no other city in this State will attain a population of more than 700,000 prior to the expiration date of the act, April 1, 1954, does not in the least affect the situation. The act still does not exclude

any city that *may* come within the classification therein [fol. 42] made during its effective existence; to the contrary, it expressly includes any such city. It therefore applies to all cities of more than 700,000 population, whether there be one or many, so long as it is effective, and does not offend against the rule. Consequently, the Reals case should no longer be followed insofar as it is in conflict herewith. Appellants' contention of unconstitutionality of House Bill No. 50 in the foregoing respects must be overruled.

The next assignment deals with the last sentence of Article III, § 22, of the Constitution, reading: "Each committee [to which a bill has been referred] shall keep such record of its proceedings as is required by rule of the respective houses and this record and the recorded vote of the members of the committee shall be filed with all reports on bills."

Following the adoption of the Constitution, the Senate adopted a rule implementing the above provision, and which in the 66th General Assembly was designated as Rule 44, reading as follows: "Each committee shall keep a record of the total number of members present when a bill is finally considered; and this record and the record of the total number voting favorably and the total number voting unfavorably on said bill, shall be filed by the committee with its report (Constitution, Art. III, Sec. 22." It is stipulated that the report of the Ways and Means Committee of the Senate to which House Bill No. 50 was referred was made in the same manner as the reports of the several committees of the several sessions of the 63rd, 64th, 65th and 66th General Assemblies on all bills passed at each session thereof, and that such is the procedure now followed.

The report on House Bill No. 50 showed the vote thereon as follows: "Members present: 10; Members voting aye: 9; Members voting no: 0; Members not voting: 1."

Appellants insist that the report as made is insufficient in that it does not set forth the names of the individual members and how each of them voted. In support of that contention they cite many cases in an effort to establish [fol. 43] that the provisions of said Sec. 22 are mandatory and quote extended excerpts from the debates on this section during the Constitutional Convention in an effort to establish that the construction they place upon the

meaning of § 22 is its intendment. Respondents cite cases and quote excerpts from the debates in an effort to establish the contrary of both contentions made by appellants. No good purpose would be served in a discussion of these cases or debates. This, for the reason that the provision simply does not require the recording of the vote of each of the members. This court would be going far afield in interpolating into the provision language that is not there and then declaring it mandatory. No one can say that the construction placed thereon by the Senate is not a literal compliance with its provisions. This point must be ruled against appellants.

This brings us to appellants' contention that the ordinance and House Bill No. 50 are unreasonable, discriminatory and uncertain and therefore violative of (a) the due process clause of the Constitution of Missouri, (b) the due process and equal protection of the laws clauses of the Federal Constitution, and (c) the requirement of uniformity of taxes levied upon the same class of subjects within the territorial limits of the levying authority.

Section Two of the ordinance imposes the tax of one-half of one per centum on (a) the salaries, wages, commissions and other earned compensation of individuals and on (b) the net profits of corporations, associations and businesses. "Net profits" are defined in Section One thereof as "the net income of any association, business or corporation remaining after deducting the necessary expenses of operation from the gross profits or earnings." Section Nine thereof charges the city collector with the enforcement of the ordinance and empowers him to adopt, promulgate and enforce "rules and regulations relating to any matter or thing pertaining to the administration and enforcement of the provisions of the ordinance * * *." Pursuant thereto, he promulgated and published in pamphlet form, under date of August 28, 1952, a set of rules and regulations. In the foreword attached thereto, it is [fol. 44] stated: "This first issue of the rules and regulations, which is flexible, is *intended as a guide* to those subject to the Earnings Tax and will be supplemented from time to time as may be necessary." (Emphasis ours.)

Among the rules so adopted was a definition of the meaning of the term "net profits." It declared, as does

House Bill No. 56, "net profits" to be the net income of any association, business or corporation remaining after deducting the necessary expenses of operation from the gross profits or earnings. It then authorized the following deductions from gross profits or earnings in determining "net profits": (1) ordinary and necessary expenses of conducting the business; (2) all losses, including reasonable allowances for exhaustion, depreciation, obsolescence or wear and tear; (3) bad debts arising and charged off during taxable year; (4) all taxes except those for local benefits and on inheritances; (5) all interest paid within the year on taxpayer's indebtedness; and (6) charitable contributions not in excess of 5% of net income.

In launching their attack upon this phase of the ordinance, appellants assume that the rules promulgated by the collector are to be treated as a part and parcel of the ordinance. If they are to be so treated, the result is that the ordinance will become void whenever the city collector, through ignorance, excessive zeal or sheer venality, promulgates a rule that is discriminatory, vague or uncertain. While it is true that he is authorized to make rules relating to "any matter or thing pertaining to the administration and enforcement" of its provisions, certainly he is not thereby impliedly empowered to make any rule that will invalidate the ordinance.

Furthermore, this action does not seek to have the ordinance declared unconstitutional because of any administrative or enforcemental rule adopted. A careful reading of the petition fails to disclose any mention of the rules other than that the ordinance "attempts to empower the defendant collector * * * to promulgate necessary rules and regulations for the administration of the tax, and authorizing every employer collecting or remitting the tax to deduct and retain therefrom three per cent of the total [fol. 45] amount withheld * * *." No where in the charging part or in the prayer of the petition is any complaint leveled against or relief sought on account of the rules. But appellants say the case was tried upon that theory and cite as authority for their assertion the agreed statement of facts, wherein a recital is made as to the adoption of the ordinance and promulgation of rules, and that a "copy of said ordinance and said pamphlet is hereto

attached, * * * incorporated herein by reference, pursuant to which ordinance and enabling act defendant Del L. Bannister [collector] claims the funds withheld from the wages of plaintiffs by defendant Shapleigh Hardware Co."

We are clearly of the opinion that such a recital in the agreed statement of facts cannot inject into the case an issue that is wholly foreign to the whole theory upon which the action is predicated and pleaded.

However, we are convinced that a mere misconception, if such it be, on the part of the collector at the time he issued the first set of rules defining his idea of what constituted allowable deductions in reckoning "net profits," or a vague statement therein, whereby some advantage might accrue to a business institution or self-employed individual as against a wage earner, could not invalidate the ordinance. The rules, at most, purport to be no more than a guide. See City of Louisville v. Sebree, 308 Ky. 420, 214 S. W. 2d 248, 255; Sutherland's Statutory Construction, 3rd Ed., Vol. 2, § 2405, p. 180. For instance, it would be wholly unreasonable to declare unconstitutional a state statute because an administrative agency promulgated a discriminatory rule in attempting to enforce it. Likewise, so would it be to declare an ordinance void on the same basis.

Is the classification of those subject to the provisions of the act into two groups, to wit: (1) those in business for themselves and (2) wage earners, arbitrary and unreasonable?

Appellants concede, as they must, that a state may make such classifications even though they result in the imposition of unequal taxes on the various classes, provided the classifications are reasonably related to the ends the statute [fol. 46] seeks to achieve, citing Caskey Baking Co. v. Commonwealth of Virginia, 313 U. S. 117, 61 S. Ct. 881, 85 L. Ed. 1223; Nashville, C. & St. L. Ry. v. Browning, 310 U. S. 362, 60 S. Ct. 968, 84 L. Ed. 1254; Madden v. Commonwealth of Kentucky, 309 U. S. 83, 60 S. Ct. 406, 84 L. Ed. 590. They contend, however, the classification here made is unreasonable and arbitrary and, in so doing, rely strongly upon the cases of Quaker City Cab Co. v. Commonwealth of Pennsylvania, 277 U. S. 389, 48 S. Ct. 553, 72 L. Ed. 927, and City of St. Louis v. Spiegel, 75 Mo. 145.

In the Quaker City Cab case, the statute involved levied

a tax upon the gross receipts of "every transportation company, now or hereafter incorporated or organized" under the laws of any sovereignty and doing business in Pennsylvania, owning or operating any railroad or other device for the transportation of freight or passengers. The Quaker Company, a New Jersey corporation, operated a fleet of taxicabs in Pennsylvania. In so doing, it was subjected to competition by individuals and partnerships operating taxicabs. The court held the act violative of the Fourteenth Amendment, saying: "In effect section 23 divides those operating taxicabs into two classes. The gross receipts of incorporated operators are taxed, while those of natural persons and partnerships carrying on the same business are not. The character of the owner is the sole fact on which the distinction and discrimination are made to depend. The tax is imposed merely because the owner is a corporation. The discrimination is not justified by any difference in the source of the receipts or in the situation or character of the property employed." The syllabus in the Spiegel case fairly summarizes the nature of the case and its holding: "A license fee upon the keepers of meatshops is a tax, and must be uniform within the territorial limits of the authority imposing it. Const. 1875, Art. 10, § 3. A city ordinance, therefore, which requires a license fee of $100 in one part of the city and $25 in the rest, is void."

It is clear there is no analogy between the classifications in those cases and the instant case. In those cases there [fol. 47] was patent discrimination between taxpayers of the same class, to wit: those engaged in identical occupations. Other cases cited by appellants, far too numerous to separately discuss, are found not to be in point.

In determining the reasonableness of the classification made by the ordinance here involved, certain established rules of construction are pertinent:

"Classification is not discrimination. It is enough that those in the same class are treated with equality." Caskey Baking Co. v. Commonwealth of Virginia, 313 U. S. 117, 61 S. Ct. 881, 883, 85 L. Ed. 1223. See also: State ex rel. Jones v. Nolte, 350 Mo. 271, 282, 165 S. W. 2d 632, 636; Campbell Baking Co. v. City of Harrisonville, 50 F. 2d

670, 673; City of St. Charles ex rel. Palmer v. Schulte, 305 Mo. 124, 129, 130, 264 S. W. 654, 655, 656.

In Madden v. Commonwealth of Kentucky, 309 U. S. 83, 60 S. Ct. 406, 84 L. Ed. 590, the court said: "The broad discretion as to classification possessed by a legislature in the field of taxation has long been recognized. This Court fifty years ago concluded that 'the fourteenth amendment was not intended to compel the states to adopt an iron rule of equal taxation,' and the passage of time has only served to underscore the wisdom of that recognition of the large area of discretion which is needed by a legislature in formulating sound tax policies. Traditionally classification has been a device for fitting tax programs to local needs and usages in order to achieve an equitable distribution of the tax burden. It has, because of this, been pointed out that in taxation, even more than in other fields, legislatures possess the greatest freedom in classification. Since the members of a legislature necessarily enjoy a familiarity with local conditions which this Court cannot have, the presumption of constitutionality can be overcome only by the most explicit demonstration that a classification is a hostile and oppressive discrimination against particular persons and classes. The burden is on the one attacking the legislative arrangement to negative every conceivable [fol. 48] basis which might support it." See also Hull v. Baumann, 345 Mo. 159, 131 S. W. 2d 721, 726.

In the case of Dole v. City of Philadelphia (1940), 337 Pa. 375, 11 A. 2d 163, the Supreme Court of Pennsylvania had under consideration an ordinance similar to the ordinance here involved. That ordinance imposed a tax on (a) salaries, wages, commissions and other earned compensations, and (b) on the net profits of businesses, professions or other activities. In discussing that feature of the ordinance, the court said: "Furthermore, salaries and wages are in their nature essentially certain, and free from the speculative features inevitably attached to net profits. A business or professional man at the end of a year of industrious work may find that his efforts have produced no net income,—only a loss. In another year his net profit may be tremendous. The salaried man or wage earner proceeds on a more even keel. He usually knows in advance

of performance just how much his salary or wage will be. Also, he knows currently what he is earning, while the business or professional man generally calculates his net profit or loss on an annual basis. He has to operate and calculate on a long range basis. Many of our laws for the benefit of employees are based upon these, and other fundamental and universally recognized, differences between the earning position of an employee and that of a business or professional man depending, not on salary, but on net profits for his livelihood."

A more recent case upholding a similar classification is the case of City of Louisville v. Sebree (1948), 308 Ky. 420, 214 S. W. 2d 248.

It is clear that the ordinance in the instant case deals with two distinct subjects of taxation and with two broad and distinct classes of taxpayers. One deals with "salaries, wages, commissions and other compensation," for which the individual earner is liable. The other deals with "net profits" of those in business for themselves, for which they are liable. Within each class there is no discrimination. No sound reason has been advanced to show such classification [fol. 49] unreasonable. We hold the ordinance valid in this respect.

Finally, appellants say that the term "net profits," as defined in the ordinance, is so uncertain that the legislative intent can only be gathered from the collector's regulations. We cannot agree. Section One of the ordinance defines "net profits" as "the net income of any association, business or corporation remaining after deducting the necessary expenses of operations from the gross profits or earnings." It is substantially in the wording, and has the identical meaning, of the definition of "net profits" set forth in House Bill No. 50. The meaning is clear and definite. The problem of what constitutes "necessary expenses of operation" is, and perhaps always will be, vexing. It is a matter of common knowledge that the concept of the meaning of this phrase changes from time to time as accepted methods of accounting change. In any event, however, for the reasons hereinabove stated, the question of whether the rules promulgated by the collector in an effort to provide a uniform method of determining "net profits"

are discriminatory is not before us. Appellants' final point is therefore overruled.

The judgment of the trial court is affirmed.

Frank Hollingsworth, Judge.

All concur.

[fol. 50] [File endorsement omitted]

IN THE SUPREME COURT OF MISSOURI

[Title omitted]

PETITION FOR APPEAL—Filed September 3, 1953

Considering themselves aggrieved by the final decree and judgment of this Court entered on July 13, 1953, plaintiffs herein do hereby pray that an appeal be allowed to the Supreme Court of the United States from said final decree and judgment and from each and every part thereof; that citation be issued in accordance with law, and that the amount of security be fixed by the order allowing the appeal, and that the material parts of the record proceedings and papers upon which said final judgment and decree was based duly authenticated be sent to the Supreme Court of the United States in accordance with the rules in such cases made and provided.

Respectfully submitted, Stanley M. Rosenblum, A. Clifford Jones, Counsel for Plaintiffs-Appellants.

[fol. 51] IN THE SUPREME COURT OF MISSOURI

[Title omitted]

ORDER ALLOWING APPEAL—September 3, 1953

Frank Walters and Edward Williams, Jr. having made and filed their petition praying for an appeal to the Supreme Court of the United States from the final judgment and decree of this Court in this cause entered on July 13, 1953, and from each and every part thereof, and having

presented their assignment of errors and prayer for reversal and their statement as to the jurisdiction of the Supreme Court of the United States on appeal pursuant to the statutes and rules of the Supreme Court of the United States in such cases made and provided.

Now, therefore, it is hereby ordered that said appeal be and the same is hereby allowed as prayed for.

It is further ordered that the amount of the appeal bond be and the same is hereby fixed in the sum of $500.00, with good and sufficient surety, and shall be conditioned as may be required by law.

It is further ordered that citation shall issue in accordance with law.

Roscoe P. Conkling, Judge.

September 3, 1953.

[fol. 52] Citation in usual form showing service on Charles J. Dolan omitted in printing.

[fol. 53] In the Supreme Court of Missouri

[Title omitted]

Assignment of Errors and Prayer for Reversal—Filed September 3, 1953

Frank Walters and Edward Williams, Jr., plaintiffs-appellants in the above entitled cause, in connection with their appeal to the Supreme Court of the United States, hereby file the following assignment of errors upon which they will rely in their prosecution of said appeal from the final judgment of the Supreme Court of Missouri entered on July 13, 1953.

The Supreme Court of Missouri erred:

1) In holding and concluding that the classification in House Bill No. 50 and Ordinance 46222 taxing gross income to wage earners and "net profits" to self-employed persons is not arbitrary and unreasonable as against appellants-wage earners, and thereby not unconstitutional and

violative of the due process and equal protection of the laws requirements of the Fourteenth Amendment to the Constitution of the United States.

2) In holding and concluding that the term "net profits" as defined in Ordinance 46222 is not so vague and uncertain as to render said Ordinance unconstitutional and violative of the due process requirements of the Fourteenth Amendment to the Constitution of the United States.

3) In holding and concluding that an Ordinance is not void and constitutionally violative of the equal protection of the laws requirements of the Fourteenth Amendment to the Constitution of the United States because an administrative officer promulgated a discriminatory regulation and sought to enforce said Ordinance under said discriminatory [fol. 54] regulation.

4) In holding and concluding that despite evidence in the record of the discriminatory administration of the Ordinance against appellants, the denial of the equal protection of the laws under the Fourteenth Amendment to the Constitution of the United States was not properly before it and, therefore, said Ordinance could not be held unconstitutional as violative of said Amendment.

Wherefore, plaintiffs-appellants pray that the final judgment of the Supreme Court of Missouri be reversed and for such other relief as the Court may deem fit and proper.

Stanley M. Rosenblum, A. Clifford Jones, Counsel for Plaintiffs-Appellants.

[fol.55] Statement Required by Paragraph 2, Rule 12 of the Rules of the Supreme Court of the United States (omitted in printing).

[fol. 56] Certificate of Service (omitted in printing).

[fol. 57] IN THE SUPREME COURT OF MISSOURI

[Title omitted]

MOTION TO RECALL MANDATE AND RULING THEREON—
September 3, 1953

Come now appellants and respectfully state to this Honorable Court:

1) That on the 13th day of July, 1953, appellants' Motion for Rehearing heretofore filed in this cause was denied by this Court and final judgment entered, and that fifteen days thereafter the mandate in this cause was sent down to the trial court.

2) That appellants are applying for a Writ of Appeal to the Supreme Court of the United States and intend to prosecute said appeal.

Wherefore, appellants respectfully move this Honorable Court forthwith to recall said mandate and for a stay of said mandate for ninety (90) days from the date of denial of appellants' motion for Rehearing.

Stanley M. Rosenblum, A. Clifford Jones, Counsel for Appellants.

Sustained. Roscoe P. Conkling. Sept. 3, 1953.

[fols. 58-59] Praecipe (omitted in printing).

[fol. 60] Clerk's Certificate to foregong transcript omitted in printing.

[fol. 61] IN THE SUPREME COURT OF THE UNITED STATES,
OCTOBER TERM, 1953

[Title omitted]

APPELLANTS' STATEMENT OF POINTS TO BE RELIED UPON—
Filed October 15, 1953

Frank Walters and Edward Williams, Jr., appellants in the above entitled cause, in connection with their appeal to the Supreme Court of the United States and in accordance with Supreme Court Rule 13, hereby file the following statement of the points upon which they will rely in their prosecution of said appeal from the final judgment of the Supreme Court of Missouri entered on July 13, 1953.

1) The Supreme Court of Missouri erred in holding and concluding that the classification in House Bill No. 50 and Ordinance 46222 taxing gross income to wage earners and "net profits" to self-employed persons is not arbitrary and unreasonable as against appellants-wage earners, and thereby not unconstitutional and violative of the due process and equal protection of the laws requirements of the Fourteenth Amendment to the Constitution of the United States.

2) The Supreme Court of Missouri erred in holding and concluding that the term "net profits" as defined in Ordinance 46222 is not so vague and uncertain as to render said Ordinance unconstitutional and violative of the due process requirements of the Fourteenth Amendment to the Constitution of the United States.

3) The Supreme Court of Missouri erred in holding and concluding that an Ordinance is not void and constitutionally violative of the equal protection of the laws requirements [fol. 62] of the Fourteenth Amendment to the Constitution of the United States because an administrative officer promulgated a discriminatory regulation and sought to enforce said Ordinance under said discriminatory regulation.

4) The Supreme Court of Missouri erred in holding and concluding that despite evidence in the record of the discriminatory administration of the Ordinance against appellants, the denial of the equal protection of the laws under the Fourteenth Amendment to the Constitution of the United States was not properly before it and, therefore,

said Ordinance could not be held unconstitutional as violative of said Amendment.

Respectfully submitted, Harry H. Craig, Stanley M. Rosenblum, Counsel for Plaintiffs-Appellants, 408 Olive Street, St. Louis 2, Missouri. CHestnut 8465.

[fol. 63] IN THE SUPREME COURT OF THE UNITED STATES, OCTOBER TERM, 1953

[Title omitted]

APPELLANTS' DESIGNATION OF PARTS OF THE RECORD TO BE PRINTED—Filed October 15, 1953

Frank Walters and Edward Williams, Jr., appellants in the above entitled cause, in accordance with Supreme Court Rule 13, hereby designate the following parts of the record to be printed:

1) The Amended Petition.
2) The Amended Answer.
3) The Agreed Statement of Facts.
4) Plaintiff's Exhibit "A"—copy of Ordinance 46222 and Regulations.
5) Decree of the Trial Court.
6) Motion for New Trial.
7) Notice of Appeal to Supreme Court of Missouri.
8) Opinion of the Supreme Court of Missouri.
9) Petition for Appeal.
10) Order Allowing Appeal.
11) Citation on Appeal.
12) Assignment of Errors.
13) Statement of Jurisdiction of the Supreme Court of the United States.
14) Statement Required by Paragraph 2, Rule 12 of the Rules of the Supreme Court of the United States.
15) Certificate of Service of Notice of Appeal.
[fol. 64] 16) Motion to Recall Mandate.
17) The Praecipe.

18) Appellants' Statement of Points to be Relied Upon.
19) This Designation of Parts of the Record to be Printed.

Respectfully submitted, Harry H. Craig, Stanley M. Rosenblum, Counsel for Plaintiffs-Appellants, 408 Olive Street, St. Louis 2, Missouri. CHestnut 8465.

[fol. 65] CERTIFICATE OF SERVICE (omitted in printing)

[fols. 66-67] [File endorsement omitted]

[fol. 68] SUPREME COURT OF THE UNITED STATES, OCTOBER TERM, 1953

No. 389

FRANK WALTERS and EDWARD WILLIAMS, JR., Appellants,

vs.

THE CITY OF ST. LOUIS, et al.

ORDER NOTING PROBABLE JURISDICTION—November 30, 1953

Appeal from the Supreme Court of the State of Missouri

The statement of jurisdiction in this case having been submitted and considered by the Court, probable jurisdiction is noted and the case is transferred to the summary docket.

(2300)